TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 781

C. R. TOWNSEND AND PARK BERNARD, A PARTNERSHIP KNOWN AS TOWNSEND & BERNARD, DOING BUSINESS AS COOK COUNTY WAREHOUSE, APPELLANTS,

vs.

M. J. YEOMANS, ATTORNEY GENERAL OF THE STATE OF GEORGIA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA

FILED MARCH 5, 1937.

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IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, VALDOSTA DIVISION

In Equity. No. 88.

C. R. Townsend and Park Bernard, a Partnership Known as Townsend & Bernard, Doing Business as Cook County Warehouse, et al.,

versus

M. J. Yeomans, Attorney-General for the State of Georgia, et al.

Bill of Complaint—Filed July 25, 1935

To the Honorable the Judges of the United States District Court for the Middle District of Georgia:

Now come C. R. Townsend and Park Bernard, a partnership known as Townsend and Bernard, doing business as Cook County Warehouse at Adel, Cook County, Georgia; W. L. Leath, doing business as Leath's Warehouse at Adel, Cook County, Georgia; H. A. Easley and E. H. Corey, a partnershiup known as Easley & Corey, doing business as Easely Warehouse at Baxley, Appling County, Georgia; E. Y. Wimbish and James E. Walker, Jr., a partnership known as Wimbish & Walker, doing business as Planters Warehouse at Baxley, Appling County, Georgia; W. B. Clark and J. J. Gibbons, a partnership doing business as Clark Warehouse at Baxley, Appling County, Georgia; A. P. Brantley and R. M. Sanford, a partnership known as R. M. Sanford & Co., doing business as Brantley Warehouse at Blackshear, Pierce County, Georgia; W. E. Fenner and Paul Morgan, a partnership known as Paul Morgan & Company, doing business as Big Z Warehouse at Blackshear, Pierce *Company*, Georgia; E. E. Bullock and Dan Currin, a partnership doing business as Farmers Warehouse at Blackshear, Pierce County, Georgia; W. H. Soaper, R. A. Hughes and Johnnie Wilkins, a partnership doing [fol. 2] business as Soaper Warehouse at Douglas, Coffee County, Georgia; W. G. Vann and J. S. Bernard, a part-

nership doing business as Red Warehouse at Douglas, Coffee County, Georgia; F. S. King, Leon Oettinger, and L. A. Barker, a partnership doing business as O. K. Tobacco Warehouse at Douglas, Coffee County, Georgia; J. M. Easterly and Frank Emerson, a partnership doing business as Farmers Brick Warehouse at Douglas, Coffee County, Georgia; J. H. McLean and R. A. George, a partnership known as McLean & George, doing business as Growers Warehouse at Douglas, Coffee County, Georgia; J. E. O'Hara and R. Y. Scruggs, a partnership known as O'Hara & Scruggs, doing business as Gold Leaf Warehouse at Hahira, Lowndes County, Georgia; H. J. Hurdle doing business as Farmers Independent Warehouse at Hahira, Lowndes County, Georgia; J. R. Smith and Hamp Powell, a partnership known as Smith & Powell, doing business as Hahira Warehouse at Hahira, Lowndes County, Georgia; W. L. House doing business as Farmers Warehouse at Hazlehurst, Jeff Davis County, Georgia; S. A. McConkey and H. I. Johnson, a partnership known as McConkey & Johnson, doing business as Planters Warehouse at Hazlehurst, Jeff Davis County, Georgia; C. H. McGowan, doing business as Metter Warehouse at Metter, Candler County, Georgia; W. P. Moore and B. T. Cannon, a partnership doing business as Grower's Warehouse at Metter, Candler County, Georgia; W. E. Fenner and J. B. Fenner and R. R. Meador, a partnership doing business as Farmers Warehouse at Moultrie, Colquitt County, Georgia; H. B. Wallace and L. R. Barber, a partnership doing business as Peoples Warehouse at Moultrie, Colquitt County, Georgia; C. K. Smith and F. R. Pidcock, Jr., a partnership doing business as Central Warehouse No. 1 and Central Warehouse No. 2, both located at Moultrie, Colquitt County, Georgia; Blake's Tobacco Warehouse, Inc., a corporation under the laws of Florida, operating Blake's Tobacco Warehouse at Moultrie, Colquitt County, Georgia; Fred W. Brown and Charles H. McDaniel, a partnership known as Brown & McDaniel, doing busi-
[fol. 3] ness as Planters Warehouse at Nashville, Berrien County, Georgia; C. B. Strickland and George E. Love, a partnership known as Strickland & Love, doing business as Independent Warehouse at Nashville, Berrien County, Georgia; W. M. Talley and Roy Talley, a partnership known as Talley Brothers, doing business as Union Warehouse at Nashville, Berrien County, Georgia; J. D. Rogers, trading as J. D. Rogers Company, operating The Big

Dixie Warehouse at Pelham, Mitchell County, Georgia; J. E. Jones and W. C. Spence, a partnership known as Jones & Spence, operating Pelham Warehouse at Pelham, Mitchell County, Georgia; W. E. Cobb and H. P. Foxhall, a partnership doing business as Cobb & Foxhall Warehouse at Statesboro, Bulloch County, Georgia; R. E. Sheppard doing business as Sheppard's Warehouse at Statesboro, Bulloch County, Georgia; W. E. Fenner and C. G. Weathersby, a partnership doing business as Fenner's Warehouse at Tifton, Tift County, Georgia; T. B. Smother and O. G. Calhoun, a partnership doing business as Smothers & Calhoun and operating Banner Warehouse at Tifton, Tift County, Georgia; Tifton Investment Company, a corporation under the laws of Georgia operating the Twin Brick Warehouse and the Farmers Warehouse, both located in Tifton, Tift County, Georgia; E. L. Moore and B. T. Cannon, a partnership doing business as Alliance Warehouse at Valdosta, Lowndes County, Georgia; L. E. Knott doing business as Savannah Avenue Warehouse at Valdosta, Lowndes County, Georgia; N. B. Smith, F. H. Wright, George D. Foxworth and Jeff J. Cozart, a copartnership doing business as Nat Smith's Warehouse at Valdosta, Lowndes County, Georgia; B. B. Saunders, doing business as B. B. Saunders' Warehouse at Valdosta, Lowndes County, Georgia; L. C. Pruitt and J. K. Larkins, a partnership doing business as Farmers Tobacco Warehouse at [fol. 4] Waycross, Ware County, Georgia; Waycross Tobacco Warehouse Company, Inc. a corporation, operating the Waycross Tobacco Warehouse at Waycross, Ware County, Georgia; Jack Meadows, J. B. O'Connor, Will Brown and W. M. Bowland, a partnership doing business as Vidalia Tobacco Warehouse No. 1 and Vidalia Tobacco Warehouse No. 2, both located at Vidalia, Toombs County, Georgia; J. C. Vann and W. W. Bernard, a partnership doing business as Vann's Tobacco Warehouse No. 1 and Vann's Tobacco Warehouse No. 2, both located at Vidalia, Toombs County, Georgia; humbly complaining and respectfully allege unto this Honorable Court as follows:

1. Your Orators bring this petition in equity against M. J. Yeomans, who is Attorney-General for the State of Georgia and who resides in DeKalb County, Georgia; and against W. C. Forehand who resides at Sylvester, Worth County, Georgia and is Solicitor-General of Tifton Circuit;

Georgia R. Lilly who resides at Quitman, Brooks County, Georgia and is Solicitor-General of the Southern Circuit; H. C. Morgan, who resides at Homerville, Clinch County, Georgia and is Solicitor-General of Alapaha Circuit; W. B. Gibbs, who resides at Jesup, Wayne County, Georgia, and is Solicitor-General of Brunswick Circuit; John S. Gibson, who resides at Douglas, Coffee County, Georgia and is Solicitor-General of Waycross Circuit; M. L. Gross, who resides at Sandersville, Washington County, Georgia, and is Solicitor-General of the Middle Circuit; Robert B. Short, who resides at Newton, Baker County, Georgia and is Solicitor-General of the Albany Circuit and William G. Neville, who resides at Statesboro, Bulloch County, Georgia and is Solicitor-General of the Ogeechee Circuit; and against J. M. Walker, who resides at Tifton, Tift County, [fol. 5] Georgia and is sheriff of Tift County; H. L. Padgett, who resides at Baxley, Appling County, Georgia and is sheriff of Appling County; H. M. Carter, who resides at Blackshear, Pierce County, Georgia and is sheriff of Pierce County; R. C. Relihan, who resides at Douglas, Coffee County, Georgia and is sheriff of Coffee County; D. L. Evans, who resides — Hazelhurst, Jeff Davis County, Georgia and is sheriff of Jeff Davis County; M. E. Trapnell, who resides at Metter, Candler County, Georgia, and is sheriff of Candler County; O. L. Griner, who resides at Nashville, Berrian County, Georgia and is sheriff of Berrien County; W. H. Baggs, who resides at Camilla, Mitchell County, Georgia and is sheriff of Mitchell County; J. G. Tilmon, who resides at Statesboro, Bulloch County, Georgia and is sheriff of Bulloch County; C. W. Culpepper, who resides at Lyons, Toombs County, Georgia and is sheriff of Toombs County; H. J. Sweat, who resides at Waycross, Ware County, Georgia and is sheriff of Ware County; Virgil Rooks, who resides at Adel, Cook County, Georgia and is sheriff of Cook County; J. L. Spivey, who resides at Valdosta, Lowndes County, Georgia and is sheriff of Lowndes County; and T. B. Beard, who resides at Moultrie, Colquitt County, Georgia and is sheriff of Colquitt County; and against Paul D. Leverett, who resides at Moultrie, Colquitt County, Georgia and is Solicitor of the City Court of Colquitt County; Hamilton Burch, who resides at Valdosta, Lowndes County, Georgia and is Solicitor of the City Court of Valdosta; L. C. Anderson, who resides at Metter, Candler County, Georgia and is Solici-

tor of the City Court of Metter; D. C. Jones, who resides at Statesboro, Bulloch County, Georgia and is Solicitor of [fol. 6] the City Court of Statesboro; B. P. Jackson, who resides at Lyons, Toombs County, Georgia and is Solicitor of the City Court of Lyons; J. B. Moore, who resides at Baxley, Appling County, Georgia and is Solicitor of the City Court of Baxley; John H. Quarterman, who resides at Waycross, Ware County, Georgia and is Solicitor of the City Court of Waycross; J. R. Walker, Jr., who resides at Blackshear, Pierce County, Georgia and is Solicitor of the City Court of Blackshear; O. B. McElvey, who resides at Pelham, Mitchell County, Georgia and is Solicitor of the City Court of Camilla and of the City Court of Pelham; and W. D. Dickerson who resides at Douglas, Coffee County, Georgia and is Solicitor of the City Court of Douglas.

2. This proceeding is a suit in equity and the amount and value involved herein exceeds the sum of three thousand ($3000.) dollars, exclusive of interest and costs.

Each of your Orators has more than three thousand ($3000.) Dollars of value involved in the subject-matter of this litigation.

The right of each of your Orators to carry on his, their or its business as herein described, freed from the provisions of the purported Act of the General Assembly of Georgia of 1935, hereinafter set out and complained of, exceeds the sum of three thousand ($3000.) dollars.

The jurisdiction of this Court depends upon the fact that this suit involves the construction and application of the Constitution and laws of the United States of America.

3. Your Orators are engaged in the business of selling and handling loose-leaf tobacco in the State of Georgia and have been so engaged for some time past. Their business is [fol. 7] conducted in substantially the following manner:

(a) Your Orators do the business which is herein described solely on a commission basis; that is, if no sales are made, they receive no reward.

Each of the complainants, prior to the opening of what is called the tobacco marketing season, has provided a warehouse or warehouses. The respective growers of loose-leaf tobacco bring their product to the warehouse selected by them and place it on the floor of such warehouse. The

warehouse is usually a very large structure having a width of approximately 150 feet and a length of approximately 300 feet. The tobacco is placed in rows along the floor of the warehouse which is kept fit for that purpose. Auction sales are had in the warehouse by following those rows and the auctioneer offers each lot separately as it is reached. Before the tobacco is placed on the floor the warehouseman has weighed it and transferred it from the container in which it is brought by the owner to the tobacco warehouseman's baskets which are made expressly for that purpose. Each basket, which is called a lot, is tagged showing the name of the owner and the weight thereof. The baskets are then placed by the warehouseman in the rows ready for sale in the manner indicated. The auction sales of loose-leaf tobacco so placed are held daily for five days of each week during the marketing season. The auction sales begin, as a rule, a short time after the tobacco is placed on the floors of the respective warehouses. The auctioneer, who is paid by the complainants respectively, then offers each parcel or lots in its order for sale to the assembled bidders. The lot is knocked off to the highest bidder, but the owner of [fol. 8] the tobacco has the option of accepting the bid or withdrawing his tobacco. The owner who accepts the amount bid for his tobacco at auction is immediately paid the purchase price thereof less the charges and that tobacco is then by the purchaser at once removed from the floor. If the owner is unwilling to accept the amount bid for his tobacco at auction on any sales day, he has the privilege of removing the same or letting it remain on the floor for a future sale. The owner is not required to pay any commission, storage or other charge on the tobacco purchased by him which remains in the warehouse pending shipment.

(b) Tobacco is offered for sale in the tobacco warehouses throughout the tobacco territory during a period of from thirty to forty-five days each year. That period is called the year's tobacco marketing season. Sales are held daily during such season except on Saturdays and Sundays of each week.

(c) Each of Your Orators has in his or its own personal capacity or as partnerships or corporations, as herein set out, procured a building suitable for such sales of loose-leaf tobacco in the manner hereinabove described. The use of that space requires the use and control of the entire building

in which the space is located for the season during which the sales are conducted.

(d) Your Orators either own the buildings used by them respectively, or rent the same. The buildings when rented, are rented either upon a flat rate or upon a basis of amount of business done, and in either event the rental paid is for a special purpose for a specified and limited time and the cost of the use of such warehouse space in the manner [fol. 9] herein indicated for the marketing season is quite substantial.

(e) It is necessary for each of your Orators to have a large amount of assistance by way of (1) skilled help, such as accountants, calculators, auctioneers and weighers; (2) a large number of less skilled assistants, such as floor supervisors, floormen, check-off men, doormen and the like; and (3) a large number of common laborers, such as porters, truckers, dumpers, and the like.

The time for which these several classes of assistants is used is not long; that is, a marketing season as stated herein, is short. The compensation paid to them must include that element and is made higher on account thereof.

Prior to the opening of the marketing season it is necessary that each of your Orators send into the territory served by his or its warehouse, a man who is skilled in the growth, harvesting and curing of tobacco. This is necessary in order that the tobacco may reach the market in a condition which will produce for the grower the best grade and price. This expense is borne by the complainants respectively and the cost of rendering this service is substantial.

4. The business of selling for one day is completed during that day. The tobacco which has been auctioned and sold is weighed, checked off, price calculated, amounts due thereon paid, and the parcels or lots so sold are removed from the floor during that day and possession thereof surrendered to the purchaser. That must be done in time to make ready for the sale on the succeeding day. That space must be made ready for the opening of the market which is usually about nine o'clock A. M. That process is repeated during each of the days on which sales are held during the season.

[fol. 10] 5. On the 28th day of March, 1935 the General Assembly of Georgia purported to enact a law, a copy of

which is hereto attached marked "Exhibit A" and made a part hereof.

Under said Act the General Assembly of Georgia undertook to enact

"that maximum charges and expenses of handling and selling leaf tobacco upon the floor of the tobacco warehouses of this State shall not exceed the following schedule, to-wit:

"For auction fees fifteen cents on all piles of one hundred pounds or less and twenty-five cents on all piles over one hundred pounds;

"for weighing and handling ten cents per pile for all piles of one hundred pounds and ten cents for each additional one hundred pounds;

"for commission on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per cent (2½%) of said gross sales."

It also undertook to make other requirements of the proprietor of each and every warehouse, requiring them, among other things, to

"render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commission on each sale."

It also requires every proprietor or person operating a leaf tobacco warehouse in this State to

"keep a correct account of all tobacco sold on the floor of his tobacco warehouse. Said account must show the cor- [fol. 11] rect amounts of leaf tobacco of first sale each day, the correct amounts resold each day by others upon the floor of said warehouse, and each and every proprietor or person operating a leaf tobacco warehouse in this State shall publish or cause to be published not later than thirty (30) days after close of selling season at said warehouse to be published in a newspaper of wide circulation located in the same County of the said warehouse, a correct statement showing all leaf tobacco of first sale by said warehouse, all tobacco resold by said warehouse and all tobacco resold by others upon the floor of said warehouse during selling season of the same year."

6. At the present time each of your Orators and all others who are likewise engaged in selling loose-leaf to-

bacco in Georgia, in so far as your Orators know, render the services which have been specified in said purported law and do so in the manner therein specified. Said requirements as to publication are now being carried out, though not in the manner described in the aforesaid Act.

Your Orators are willing to continue to comply with the requirements of said Act as to each of the above matters and things and in addition thereto to make the publication specified in said Act in the respective County newspapers, as therein provided.

7. The aforementioned purported Act also provides:

"It shall be unlawful for any charges in excess of those named in this bill to be made or accepted and any proprietor or person in charge of a leaf tobacco warehouse in this State violating this Act shall be guilty of a misde- [fol. 12] meanor and punished for the same."

8. Your Orators respectfully aver that the aforementioned purported enactment of the General Assembly of Georgia is void and of no effect for that:

(a) The business of handling and selling leaf tobacco conducted by your Orators as herein described is not impressed with a public interest and is not subject to regulation by the General Assembly of Georgia;

(b) Said business as herein described and as referred to in said purported enactment of the General Assembly of Georgia is not so impressed with a public interest as to empower the General Assembly of Georgia to control any or all of the aforementioned charges;

(c) The General Assembly of Georgia is without power or jurisdiction to enact or to enforce the purported enactment, copy of which is hereto attached marked "Exhibit A" and made a part hereof.

(d) The schedule of like charges which were paid to your Orators during the last tobacco marketing season and which have been paid for a number of years, is as follows:

Auction fees—twenty-five cents per pile up to and including 200 pounds; fifty cents per pile above 200 pounds;

Warehouse (weighing) fees—twenty-five cents per pile up to 100 pounds; twenty-five cents for each additional 100 pounds;

Commissions—2½% on the gross sales measured in dollars.

These charges are fair and reasonable; they have been satisfactory to the persons who grow and sell leaf tobacco under the plan herein referred to and under which your Orators operate.

[fol. 13] (e) The application of the schedule of charges fixed by the purported Act of the General Assembly of Georgia as the maximum charges to be made and accepted, and herein complained of, will produce a reduction of from twenty to thirty per centum in the said former charges.

To illustrate the extent of the reduction in charges which the aforementioned purported Act of the General Assembly of Georgia of 1935 will work if allowed to become operative, your Orators allege that under the rates in effect in 1934 and for many years prior thereto on a sale of 758 pounds of leaf tobacco for the aggregate price of $86.40 the charges were $5.87. Under the schedule of charges prescribed by the said purported Act of 1935 those charges would be $4.09 of a reduction of 30.32 per centum. On a sale involving 474 pounds selling for $133.37 the charges under the former schedule were $6.44, while under the new schedule this sale would produce $5.07 or a reduction of 21.26 per centum. On a sale of 902 pounds for $207.60 under the old charges the amount received were $9.44 while under the new charges the amount would be $7.49 or a reduction of 20.65 per centum.

(f) The charges prescribed by the aforementioned schedule fixed in said purported Act are unjust and unreasonable, and will not provide to your Orators an adequate reward for the time and service rendered and for the use of their respective properties.

(g) The owners of the tobacco which is sold in the manner herein described consist of the growers of tobacco and tobacco speculators who have purchased tobacco and then offer it for re-sale. These persons for the most part reside over a wide territory in the general neighborhood in which the sale takes place. The tobacco speculators usually reside out of the State of Georgia.

[fol. 14] The amount of reward to complainants in any one transaction is not large. In much the larger part of said transactions the reward is small and if the proposed

reduced charges prescribed by the aforementioned purported Act are put into effect by the complainants, it will be impracticable for them, or any of them, who have been required to make said reduced charges which are alleged to be unjust, unreasonable, arbitrary and confiscatory, to collect the difference between the unlawful charges and the lawful charges because the amount of each transaction will be small, the number of transactions large and the persons from whom the collections will have to be made are widely scattered.

(h) The said schedule of maximum charges prescribed by said purported Act, if put into effect, will deprive each of your Orators of his, their or its property without due process of law and will deprive him, them or it of the equal protection of the law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, upon which your Orators rely.

9. Your orators are thus placed in the position of submitting to the aforementioned new schedule of maximum charges which is unjust, unreasonable, arbitrary and confiscatory as herein alleged, and which schedule applies to a business not so impressed with a public interest as to authorize the General Assembly of Georgia to fix any of the aforementioned charges as herein set out, and which is outside the powers of the General Assembly of Georgia to regulate, for the reasons herein set out; and which will result in the taking of your Orators' respective properties without due process of law; or on the other hand continuing to charge on the basis of the old rates and thereby incurring many [fol. 15] prosecutions therefor; that is, prosecutions for each sale by each of your Orators. The number of sales per day run in varying amounts, some days as high as thirty-two hundred sales in one day in a single warehouse.

If said Act is Constitutional each of your Orators will be subject, if convicted, to the penalties imposed by law for a misdemeanor. Those penalties may be as high as one thousand ($1000) dollars as a fine and twelve months on the chain-gang and six months in jail.

10. It is unreasonable for your Orators to assume a risk which not only jeopardizes their properties but also their liberties. In such circumstances they should not be required on the one hand to give up their properties without due

process of law and without judicial determination of the reasonableness, justness and lawfulness of the aforesaid schedule of maximum charges and expenses of handling and selling leaf tobacco in Georgia, or on the other take such risks.

11. Your Orators are entitled to a safe and adequate judicial review of the legality of the aforementioned schedule of maximum charges and expenses purported to have been enacted by the General Assembly of Georgia as aforesaid, and they are entitled thereto under the provisions of the Fourteenth Amendment to the Constitution of the United States of America, upon which they rely.

12. No safe and adequate judicial review can be had without the aid and protection of a court of equity. This protection your Orators now seek at the hands of this Court.

13. The number of prosecutions which may be brought against your Orators in the event they do not yield to the unlawful Act of the General Assembly prescribing the [fol. 16] aforesaid schedule of maximum charges may very well be so great as to prevent your Orators from carrying on their respective businesses of the kind described in said Exhibit A hereto. The expense of defending such prosecutions would be enormous. If those cases should be decided against your Orators and fines and penalties be imposed the result would be complete destruction of their properties because of the great number of fines and penalties to which they would be subject.

14. Your Orators further aver that the defendant, M. J. Yeomans is the Attorney-General of the State of Georgia, and as such may institute, conduct and maintain all suits, proceedings and prosecutions he may deem necessary for the enforcement of the laws of the State, the preservation of order and the protction of public rights; and that each of the other defendants is a solicitor-general of the State of Georgia in his respective Circuit, and as such is likewise charged with the duty of enforcing laws, prosecuting all criminal cases in the Superior Court of his Circuit and representing the State in all other cases in the Superior Court of the Circuit, each of said defendants being prosecuting officers for the State of Georgia in his respective Circuit.

Your Orators further aver that the defendants, who are prosecuting officers in their respective Counties, as herein

alleged, and in courts having jurisdiction therein junior to the Superior Court, have jurisdiction of the prosecution of misdemeanors. Each of them will feel under obligation to prosecute your Orators in their respective jurisdictions, unless your Orators shall submit to the unjust charges prescribed in the aforesaid purported Act of 1935.

[fol. 17] Your Orators further aver that the other persons herein made defendants as sheriffs of their respective Counties are serving as such and will feel themselves to be under the duty of enforcing any process or warrant of arrest which may be issued out of any court in their respective jurisdictions and which charge your Orators, or any of them, their agents, servants, employees or representatives, with a violation of any penal provisions of the aforementioned void Act of the General Assembly of Georgia, copy of which is hereto attached; and they will make arrest on such process unless restrained and enjoined by the processes of this court.

15. Your Orators aver that, if the defendants herein are not restrained and enjoined, your Orators will be subject to prosecution by said defendants for carrying on their business after the beginning of said tobacco marketing season; unless they yield to the aforementioned void Act of the General Assembly of Georgia and put into effect the schedule of maximum charges and expenses for the carrying on of their business as herein referred to, which is prescribed by said void Act; and which said charges and expenses will work a reduction estimated at twenty to thirty per centum in the charges of your Orators, resulting in very great loss to them, and the use of their organizations, their time, skill and their plants and equipment on a basis of reward which is very much less than reasonable and which is unjust, unreasonable and confiscatory, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States of America.

16. Your Orators have no relief from the said legislation and no method of procuring a safe and adequate juridical [fol. 18] review of said purported Act of the General Assembly of Georgia except through the aid of this court.

17. The prosecutions which may be instituted by said Attorney-General of Georgia and by the Solicitors-General of Georgia and the other defendants herein named will be

for the purpose of giving force and effect to the aforesaid enactment of the General Assembly of Georgia, which is void for the reasons and on account of the matters and things herein set out. As against these multitudinous prosecutions your Orators have no protection or relief except in this Court of Equity.

18. Your Orators allege that the defendants herein named who are sheriffs and their subordinate officers will undertake to enforce any prosecutions which may be instituted in any of the courts in this State in their respective jurisdictions for the purpose of enforcing the aforementioned void Act of the General Assembly and this will be done by arrest of your Orators, or their officers, agents, or employees, which will cause great interruption in the business of your Orators and will subject them to unconstitutional penalties and punishments; will put them to great expense of defense; bring about confusion of judgments, and subject them to the peril of undue and unnecessary prosecutions.

19. Wherefore, your Orators waive discovery and answer under oath of each of the defendants, and pray:

(a) That the defendants, and each of them, be restrained and enjoined from enforcing the Act of the General Assembly of Georgia, approved March 28, 1935, heretofore referred to and copy of which is hereto attached, marked "Exhibit A", and made a part hereof.

(b) That said defendants, and each of them, be restrained from bringing any prosecutions, suits in equity or actions [fol. 19] at law against your Orators on account of the matters and things herein contained, except in this proceeding.

(c) That the aforementioned enactment of the General Assembly of Georgia be declared to be null and void and of no force whatsoever.

(d) That rule nisi issue requiring the defendants, and each of them, to be and appear before this Honorable Court at a time and place to be fixed therein to show cause why the prayers of this bill should not be granted, and why they, and each of them, should not be temporarily restrained and enjoined from instituting any prosecution or suit in equity or action at law against your Orators, or any of them, on ac-

count of the matters and things herein referred to; and that upon such hearing they be restrained until the final order of this court from instituting or carrying on any prosecution or suit in equity or action at law against your Orators, or any of them, as aforesaid; that upon final hearing they be permanently and perpetually enjoined.

(e) That the writ of subpoena of the United States of America issue from this Honorable Court, addressed to each of the defendants herein named, requiring each of them to be and appear before this Court to answer or otherwise plead to this cause on a day certain to be therein named.

(f) That such duplicate writs may be issued against the defendants who reside out of the Middle District of Georgia directed to the Marshall of any other District in which any of the defendants reside and that the Clerk issuing the dupli- [fol. 20] cate writs shall endorse thereon that they are a true copy of the writ sued out of the United States District Court for the Middle District of Georgia and that such original and duplicate writs when executed and returned to the office from which they issued, shall constitute and be proceeded on as one suit.

(g) Your Orators pray for general relief.

Respectfully submitted, Wilcox, Connell & Wilcox, J. O. Gibson, Alston, Alston, Foster & Moise, Attorneys for Complainants.

July 24, 1935.

Duly sworn to by B. B. Saunders. Jurat omitted in printing.

[fol. 21] EXHIBIT "A" TO BILL OF COMPLAINT

An Act to create an Act fixing a maximum charge by leaf tobacco warehouses of this State for selling and handling leaf tobacco and for other purposes.

Section 1. Be it enacted by the General Assembly and the same is hereby enacted by authority of the same. That beginning with the enactment and approval of this Act, that maximum charges and expenses of handling and selling leaf tobacco upon the floor of the tobacco warehouses of this State shall not exceed the following schedule, to-wit:

For auction fees fifteen cents (15) on all piles of one hundred pounds (100) or less and twenty-five (25) cents on all piles over one hundred pounds (100). For weighing and handling ten cents (10) per pile of all piles of one hundred (100) pounds and ten cents (10) for each additional one hundred pounds (100) for commissions on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half percent (2½) of said gross sales. The proprietor of each and every warehouse shall render to each seller of tobacco at this warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commissions on each sale.

Section 2. Every proprietor or person operating a leaf tobacco warehouse in this State shall keep a correct account of all tobacco sold on the floor of his tobacco warehouse. Said account must show the correct amounts of leaf tobacco of first sale each day. The correct amounts resold each day by others upon the floor of said warehouses, and each and every proprietor or person operating a leaf tobacco ware-[fol. 22] house in this state shall publish or cause to be published not later than thirty (30) days after close of selling season at said warehouse to be published in a newspaper of wide circulation located in the same county of the said warehouse, a correct statement showing all leaf tobacco of first sale by said warehouse all tobacco resold by said warehouse and all tobacco resold by others upon the floor of said warehouse during selling season of the same year.

Section 3. Upon the passage and approval of this bill it shall be unlawful for any charges in excess of those named in this bill to be made or accepted and any proprietor or person in charge of a leaf tobacco warehouse in this state violating this act shall be guilty of a misdemeanor and punished for the same.

Section 4. That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed.

[fol. 23] This bill having been presented to the Court, and the Attorney General of Georgia being present:

It is ordered that the same be filed and that it be heard on its motion for restraining order on the 27th ult. 9:00

A. M. at the District Court Room in Macon, Ga. This July 25, 1935.

Bascom S. Deaver, Judge.

[File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR RESTRAINING ORDER—Filed July 25, 1935

To the Honorable the Judges of the United States District Court for the Middle District of Georgia:

Now come C. R. Townsend and Park Bernard, a partnership known as Townsend and Bernard, doing business as Cook County Warehouse, at Adel, Cook County, Georgia; W. L. Leath, doing business as Leath's Warehouse at Adel, Cook County, Georgia; H. A. Easley and E. H. Corey, a partnership known as Easely & Corey, doing business as Easely Warehouse at Baxley, Appling County, Georgia; E. Y. Wimbish and James E. Walker, Jr., a partnership known as Wimbish & Walker, doing business as Planters Warehouse at Baxley, Appling County, Georgia; W. B. Clark and J. J. Gibbons, a partnership doing business as Clark Warehouse at Baxley, Appling County, Georgia; A. P. Brantley and R. M. Sanford, a partnership known as R. M. Sanford & Co., doing business as Brantley Warehouse at Blackshear, Pierce County, Georgia; W. E. Fenner and Paul Morgan, a partnership known as Paul Morgan & Company, doing business as Big Z Warehouse at Blackshear, Pierce County, Georgia; E. E. Bullock and Dan Currin, a [fol. 25] partnership doing business as Farmers Warehouse at Blackshear, Pierce County, Georgia; W. H. Soaper, R. A. Hughes and Johnnie Wilkins, a partnership doing business as Soaper Warehouse at Douglas, Coffee County, Georgia; W. B. Vann and J. S. Bernard, a partnership doing business as Red Warehouse at Douglas, Coffee County, Georgia; F. S. King, Leon Oettinger, and L. A. Barker, a partnership doing business as O. K. Tobacco Warehouse at Douglas, Coffee County, Georgia; J. M. Easterly and Frank Emerson, a partnership doing business as Farmers Brick Warehouse at Douglas, Coffee County, Georgia; J. H. McLean

and R. A. George, a partnership known as McLean & George, doing business as Growers Warehouse at Douglas, Coffee County, Georgia; J. E. O'Hara and R. Y. Scruggs, a partnership known as O'Hara & Scruggs, doing business as Gold Leaf Warehouse at Hahira, Lowndes County, Georgia; H. J. Hurdle, doing business as Farmers Independent Warehouse at Hahira, Lowndes County, Georgia; J. R. Smith and Hamp Powell, a partnership known as Smith & Powell, doing business as Hahira Warehouse at Hahira, Lowndes County, Georgia; W. L. House, doing business as Farmers Warehouse at Hazlehurst, Jeff Davis County, Georgia; S. A. McConkey and H. I. Johnson, a partnership known as McConkey & Johnson, doing business as Planters Warehouse at Hazlehurst, Jeff Davis County, Georgia; C. H. McGowan, doing business as Metter Warehouse at Metter, Candler County, Georgia; W. P. Moore and B. T. Cannon, a partnership doing business as Grower's Warehouse at Metter, Candler County, Georgia; W. E. Fenner and J. B. Fenner and R. R. Meador, a partnership doing business as Farmers Warehouse at Moultrie, Colquitt County, Georgia; H. B. Wallace and L. R. Barber, a part-
[fol. 26] nership doing business as Peoples Warehouse at Moultrie, Colquitt County, Georgia; C. K. Smith and F. R. Pidcock, Jr., a partnership doing business as Central Warehouse No. 1 and Central Warehouse No. 2, both located at Moultrie, Colquitt County, Georgia; Blake's Tobacco Warehouse, Inc., a corporation under the laws of Florida, operating Blake's Tobacco Warehouse at Moultrie, Colquitt County, Georgia; Fred W. Brown and Charles H. McDaniel, a partnership known as Brown & McDaniel, doing business as Planters Warehouse at Nashville, Berrien County, Georgia; C. B. Strickland and George E. Love, a partnership known as Strickland & Love, doing business as Independent Warehouse at Nashville, Berrien County, Georgia; W. M. Talley and Roy Talley, a partnership known as Talley Brothers, doing business as Union Warehouse at Nashville, Berrien County, Georgia; J. D. Rogers, trading as J. D. Rogers Company, operating The Big Dixie Warehouse at Pelham, Mitchell County, Georgia; J. E. Jones and W. C. Spence, a partnership known as Jones & Spence, operating Pelham Warehouse at Pelham, Mitchell County, Georgia; W. E. Cobb and H. P. Foxhall, a partnership doing business as Cobb & Foxhall Warehouse at Statesboro, Bulloch County, Georgia; R. E. Sheppard doing business as Shep-

pard's Warehouse at Statesboro, Bulloch County, Georgia; W. E. Fenner and C. G. Weathersby, a partnership doing business as Fenner's Warehouse at Tifton, Tift County, Georgia; T. B. Smothers and O. G. Calhoun, a partnership doing business as Smothers & Calhoun and operating Banner Warehouse at Tifton, Tift County, Georgia; Tifton Investment Company, a corporation under the laws of Georgia, operating the Twin Brick Warehouse and the [fol. 27] Farmers Warehouse, both located at Tifton, Tift County, Georgia; E. L. Moore and B. T. Cannon, a partnership doing business as Alliance Warehouse at Valdosta, Lowndes County, Georgia; L. E. Knott doing business as Savannah Avenue Warehouse at Valdosta, Lowndes County, Georgia; N. B. Smith, F. H. Wright, George D. Foxworth and Jeff J. Cozart, a copartnership doing business as Nat Smith's Warehouse at Valdosta, Lowndes County, Georgia; B. B. Saunders, doing business as B. B. Saunders' Warehouse at Valdosta, Lowndes County, Georgia; L. C. Pruitt and J. K. Larkins, a partnership doing business as Farmers Tobacco Warehouse at Waycross, Ware County, Georgia; Waycross Tobacco Warehouse Company, Inc., a corporation, operating the Waycross Tobacco Warehouse at Waycross, Ware County, Georgia; Jack Meadows, J. B. O'Connor, Will Brown and W. M. Bowland, a partnership doing business as Vidalia Tobacco Warehouse No. 1 and Vidalia Tobacco Warehouse No. 2, both located at Vidalia, Toombs County, Georgia; and J. C. Vann and W. W. Bernard, a partnership doing business as Vann's Tobacco Warehouse No. 1 and Vann's Tobacco Warehouse No. 2, both located at Vidalia, Toombs County, Georgia, and respectfully represent unto this Honorable Court as follows:

1. Complainants have filed their bill in equity seeking to enjoin the defendants therein named from enforcing a certain Act or purported Act of the General Assembly of Georgia, set out as Exhibit A to the aforementioned bill, and here referred to.

2. Said Act purports to reduce the charges which the complainants have been making for the service described therein; that is, for auction fees for selling loose-leaf to- [fol. 28] bacco and for weighing and handling said loose-leaf tobacco. The nature of the business of each complainant is described in the aforementioned bill. If the said re-

ductions in the charges which said aforementioned Act of the General Assembly of Georgia of 1935 undertakes to require, are allowed to go into effect, they will reduce complainants' reward from their said businesses by approximately twenty-five (25%) percentum of the reward received for the same kind of service rendered in 1934.

3. Complainants represent that the tobacco marketing season for the year 1935 begins on August first and if the business is transacted under said reduced schedule of charges which the General Assembly of Georgia of 1935 has undertaken to impose, it will mean that a small amount is lost by each of the complainants in each of sales had by them. Those transactions will, during the course of a marketing season, be very numerous and will be had with many persons who reside in many localities and if the said business is done on the basis of the charges prescribed by the aforementioned purported Act of the General Assembly of Georgia of 1935, and complainants are then successful in sustaining their position to the effect that said Act of the General Assembly of Georgia of 1935 is void in so far and to the extent it undertakes to regulate the charges made by complainants in the conduct of their business, complainants will have no relief for the reasons set out above and also as set out in said bill.

4. Complainants allege that the purported Act of the General Assembly of Georgia of 1935, copy of which is attached to the aforementioned bill marked Exhibit A, was passed without any of them having an opportunity to be [fol. 29] heard before the General Assembly of Georgia; and they are entitled to a safe and adequate judicial review of the legality thereof.

Complainants further allege that it will be a denial of due process of law if such judicial review can be effected by appeal to the courts only at the risk of having to pay penalties so great that it is better to yield to orders of uncertain legality than to ask the protection of the law.

The laws of the State of Georgia provide no legislative tribunal before whom complainants may be heard.

If the purported Act of the General Assembly of Georgia of 1935 reducing the charges to be made for the services rendered by these complainants can be valid under any circumstances, it can not be valid if it fixes charges which are

unreasonable, unjust or confiscatory or without its jurisdiction. Complainants allege that the said reduced rates or charges are and will be unjust, unreasonable and confiscatory.

5. If the enforcement of said purported Act of the General Assembly of Georgia is not restrained pending further hearing thereon and until the court shall have determined, in the manner prescribed by law, whether or not the said Act is valid, complainants will be forced to take the risk of prosecution on each transaction and punishment therefor as provided by the laws of Georgia in the case of misdemeanor, or to comply with said purported Act and lose their fair charges without any adequate remedy for the collection thereof.

6. Complainants represent that irreparable loss or damage will result to each of them unless a temporary restraining order is granted until the hearing and determination of the application for interlocutory injunction.

[fol. 30] 7. Complainants offer to give security in such sum as the Court may deem proper conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Complainants further offer to do and perform such other acts and things as may seem to the Court proper and equitable in order to insure the parties at interest that they will suffer no loss or damages in the event of the granting of said temporary restraining order.

8. Complainants refer to said bill and each and every part thereof, and on the grounds therein set out and as well on the grounds herein contained, pray that an order of this Court be entered temporarily restraining the defendants and each and all of them named in said bill from undertaking to enforce the said purported Act of the General Assembly of Georgia of 1935; and that upon interlocutory hearing an interlocutory injunction be issued enjoining the defendants and each of them from undertaking to enforce the said purported Act of the General Assembly of Georgia of 1935 which is attached to said bill marked Exhibit A, until there shall be a final hearing upon the said cause; and that upon final hearing said Act be declared to be

null and void and the enforcement thereof be perpetually and permanently enjoined; that a time and place be fixed for the hearing of this cause and the Court be assembled in the manner required by statute.

Respectfully submitted, Wilcox, Connell & Wilcox, J. O. Gibson, Alston, Alston, Foster & Moise, Attorneys for Complainants.

July 25, 1935.

[fol. 31] *Duly sworn to by E. L. Meadows. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF COMPLAINT, ETC.—Filed July 25, 1935

To the Honorable Eugene Talmadge, as Governor of the State of Georgia, and Honorable M. J. Yeomans, Attorney-General of the State of Georgia:

You are hereby notified that the complainants, C. R. Townsend and Park Bernard, a partnership known as Townsend and Bernard, doing business as Cook County warehouse, et al, will at 12:00 o'clock Noon on the 25 day of July, 1935 present to the Honorable Bascom S. Deaver as United States District Judge for the Middle District of Georgia, at his office in the City of Macon, State of Georgia, a bill in equity against the Honorable M. J. Yeomans as attorney-general for the State of Georgia, et al; and will then move the Honorable Bascom S. Deaver, Judge as aforesaid, to take jurisdiction of the said bill, to set a time and place for the hearing of the same and to call together two other Judges in the manner provided by law; and complainants will, at the time and place to be fixed by him, before the said Court as thus organized, move the said Court to hear and consider the said bill and to grant the prayers thereof, and to issue an interlocutory order, enjoining the enforcement of the Act of the General Assembly of Georgia of 1935, copy of which is attached to said bill [fol. 33] and marked "Exhibit A" thereto.

Upon the presentation of said bill complainants will move

said Honorable Bascom S. Deaver, Judge as aforesaid, to grant a restraining order on the ground that irreparable loss and damages will result to the complainants unless the same is granted.

Copy of said bill is furnished to each of you herewith and made a part of this notice.

Respectfully, Wilcox, Connell & Wilcox, J. O. Gibson, Alston, Alston, Foster & Moise, Attorneys for Complainants.

July 23, 1935.

The undersigned, as Attorney-General of the State of Georgia and as Attorney for Honorable Eugene Talmadge, Governor of the State of Georgia, does hereby acknowledge service of the foregoing notice; to have received a copy thereof and of the bill therein referred to.

This 23rd day of July, 1935.

M. J. Yeomans, Atty. Genl. and Attorney for Hon. Eugene Talmadge, Governor.

[File endorsement omitted.]

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY RESTRAINING ORDER—Filed July 27, 1935

Complainants in the above stated cause have presented their bill in equity, duly sworn to, in which they pray, amongst other things, that the defendants and each of them named therein be restrained from enforcing the Act of the General Assembly of Georgia, approved March 28, 1935, a copy of which is set out as Exhibit A to said bill.

They have likewise presented their motion for an order temporarily restraining the defendants, and each of them, named in said bill from undertaking to enforce the purported Act of the General Assembly of Georgia of 1935, pending interlocutory hearing on said bill. Said motion is likewise sworn to. No answer or other response denying any fact alleged in said bill or motion has been filed in this cause.

It being made to appear to this court that notice was given to the Governor of Georgia and to the Attorney General of Georgia that said bill would be presented to this court

chambers, Judge's office, in Macon, Ga., on the 25th day of [fol. 35] July, 1935; and the same was then presented and partially heard and continued until the 27th day of July, 1935; and the said Attorney General having appeared in court on behalf of himself and the Governor;

It being further made to appear to this court that the Act of the General Assembly of Georgia of 1935 set out as Exhibit A to said bill puts the complainants in the position that they must at their own risk pass upon the validity of said Act, which validity they deny, or obey said Act, which may finally be held to be void or disobey what may be ultimately held to be a lawful Act.

It being further made to appear to this court that the complainants are entitled to a safe and adequate judicial review of the legality of said purported Act of the General Assembly of Georgia; and that it will be a denial of due process of law if such judicial review can be effected by appeal to the courts only at the risk of having to pay penalties so large that it is better to yield to the terms thereof than to ask the protection of the law;

It being made further to appear to this court that in the carrying on of complainant's business as contemplated by the said purported Act of the General Assembly of Georgia, many sales will be made by each of the complainants each day during the period known as the 1935 tobacco marketing season in Georgia, and that if the reward of the complainants for the services rendered by them is fixed on the terms prescribed by the aforesaid purported Act of the General Assembly of Georgia of 1935, the loss to the complainants in each instance will be small but in the aggregate very large, and that the sales will be made for many persons living in many localities, and the collection from them of the valid [fol. 36] charges in the event complainants' bill should be sustained, would be impracticable if not impossible;

The court is of the opinion that irreparable loss or damage may result to the complainants if said purported Act of the General Assembly of Georgia of 1935 is permitted to go into effect without the judicial review thereof guaranteed to them by the Fourteenth Amendment to the Constitution of the United States:

Therefore, the defendants and each of them named in said bill are temporarily restrained from enforcing the provisions of the said purported Act of the General Assembly

of Georgia of 1935 until the hearing and determination of the application for interlocutory injunction, which said hearing shall be had upon notice as required by law.

Motion having been made on behalf of the Attorney General to dismiss complainants' bill, for that it does not adequately state the facts relied upon.

It is Ordered, that the complainants have until the hearing before the Statutory Court hereinafter provided for, to prepare and file an amendment setting up such additional facts as they may deem proper, and that the said amendment be served upon the Attorney General of Georgia as much before the said hearing before the said Statutory Court as is practicable.

It is further ordered that each of the complainants shall deposit in the registry of the court each day during the 1935 tobacco marketing season in Georgia the difference between the amount of money actually collected by them for auction fees and for weighing and handling of leaf tobacco, on the one hand, and the amount of money which would have been collected by them under the charges fixed or undertaken to [fol. 37] be fixed for the same services by the Act of the General Assembly of Georgia of 1935, a copy of which is attached as Exhibit A to said bill.

Said remittances shall be made to the Clerk of this Court by certified checks or cashier's checks or United States Post Office money-orders, payable to "George F. White, Clerk, for deposit in the registry". Each of the complainants will so keep his books and other records, that they will show the persons for whose account the said remittances are made and the amount of the remittances for the benefit of each person. Said statements shall be made to the Clerk of this Court immediately after the closing of the tobacco marketing season for 1935 in Georgia, or sooner as may be required by this court or if the Clerk of this Court for the proper keeping of his records shall so request. These remittances shall be mailed to the Clerk on the day following the day of the sales covered by them; that is, remittances for sales made on Monday shall be made on Tuesday, etc.

Said deposits shall be held by the Clerk of this Court as security that each of the complainants shall pay such costs and damages as may be caused or suffered by any party who might suffer such loss or damage because of this restraining

order. Said moneys shall not be paid out except on order of the court.

Complainants or some of them shall give bond to the Clerk of this Court, to be approved by him, in the sum of $2,500.00, conditioned to pay to the Clerk a sum equal to such costs, including the Clerk's commissions, as may — attached to the aforementioned deposit or the disbursement of the same, as the same may be determined by this court, said sum to be held for the benefit of growers or any person at interest.

[fol. 38] It is Further Ordered, that, upon the complaint of any person at interest, the Commissioner of Agriculture of Georgia shall have the right to examine the records of the complainants as may be necessary or proper to determine the correctness of the complaint and the details thereof.

The court will proceed to assemble a court according to the statute and fix a time and place for the hearing of this cause on interlocutory hearing and will notify counsel for the complainants, who shall give ten days' notice of the time and place of said hearing to the Governor of Georgia and to the Attorney General of Georgia and to all other parties or their counsel.

Bascom S. Deaver, U. S. District Judge.

July 27th, 1935.

The above order is hereby modified so as to permit complainants to pay $2500.00 into the registry of the court in lieu of bond.

Bascom S. Deaver, Judge.

Aug. 2, 1935.

[File endorsement omitted.]

[fol. 39] In United States District Court

[Title omitted]

Joint and Several Answer of all Defendants—Filed August 16, 1935

Come now M. J. Yeomans, Attorney General for the State of Georgia; W. C. Forehand, Solicitor General of the Tifton Judicial Circuit; George R. Lilly, Solicitor General of the Southern Circuit; H. C. Morgan, Solicitor General of the Alapaha Judicial Circuit; W. B. Gibbs, Solicitor Gen-

eral of the Brunswick Judicial Circuit; John S. Gibson, Solicitor General of the Waycross Judicial Circuit; M. L. Gross, Solicitor General of the Middle Judicial Circuit; Robert B. Short, Solicitor General of the Albany Judicial Circuit; William G. Neville, Solicitor General of the Ogeechee Judicial Circuit; Paul D. Leverett, Solicitor of the City Court of Colquitt County; Hamilton Burch, Solicitor of the City Court of Valdosta; L. C. Anderson, Solicitor of the City Court of Metter; D. C. Jones, Solicitor of the City Court of Statesboro; B. P. Jackson, Solicitor of the City [fol. 40] Court of Lyons; J. B. Moore, Solicitor of the City Court of Baxley; John H. Quarterman, Solicitor of the City Court of Waycross; J. R. Walker, Jr., Solicitor of the City Court of Blackshear; O. B. McElvey, Solicitor of the City Court of Camilla and of the City Court of Pelham; W. D. Dickerson, Solicitor of the City Court of Douglas; J. M. Walker, Sheriff of Tift County; H. L. Padgett, Sheriff of Appling County; H. M. Carter, Sheriff of Pierce County; R. C. Relihan, Sheriff of Coffee County; D. L. Evans, Sheriff of Jeff Davis County; M. E. Trapnell, Sheriff of Candler County; O. L. Griner, Sheriff of Berrien County; W. H. Baggs, Sheriff of Mitchell County; J. G. Tilmon, Sheriff of Bulloch County; C. W. Culpepper, Sheriff of Toombs County; H. J. Sweat, Sheriff of Ware County; Virgil Rooks, Sheriff of Cook County; J. L. Spivey, Sheriff of Lowndes County; and T. V. Beard, Sheriff of Colquitt County, defendants named in the above stated cause and file this their joint and several answer to the bill of complaint and for answer thereto say:

1

The bill of complaint in said cause does not state any matter of equity entitling complainants to the relief prayed for as against these defendants or either of them, nor are the facts set out in said bill of complaint sufficient to entitle complainants to any relief as against defendants or either of them.

2

The allegations of the bill of complaint disclose that the defendants thereto are the Attorney General for the State of Georgia, the Solicitors General of the Judicial Circuits in the State of Georgia, the Sheriffs of certain counties in said State and Solicitors of the City Courts of several

[fol. 41] counties in said State, all being officers of the State of Georgia and in legal effect said suit is one against the State of Georgia sought to be brought and maintained against said State without its consent and should be dismissed.

3

Under the laws of the State of Georgia the officers named as parties defendant to said cause have no such interest in the subject matter of said suit and no such relation to the Act of the General Assembly of Georgia under attack and no such duties to perform with respect to the enforcement of said Act as entitles complainants to maintain said bill against the defendants or either of them and said bill for lack of sufficient parties defendant should be dismissed.

4

Complainants' bill does not disclose or assert any threatened action on the part of any officer named as a party defendant or other person for that matter, or such extraordinary circumstance or danger of loss as would justify a court of equity to grant the relief prayed for.

5

The allegations of said bill disclose that the complainants therein named are operating their several businesses as warehousemen under a common agreement with reference to the amount to be charged for the service rendered by them respectively and under such circumstances and conditions as tend to create a monopoly in the field covered by their operation and eliminate competition therein contrary to public policy and therefore are not entitled to any relief at the hands of this court and are not entitled to the protec- [fol. 42] tion of a court of equity in the furtherance of their monopolistic combine.

6

The allegations of fact as set forth in complainants' bill are insufficient to show that a charge of fees on the scale fixed by the Act of the General Assembly of Georgia approved March 28, 1935, does or will result in a confiscation of complainants' property or if enforced would operate to deprive them of their property without due process of law.

The allegations as contained in subdivisions (e), (f), (g), and (h) of Paragraph Seven as well as other allegations in said bill made to the effect that the charges as prescribed by said Act approved March 28, 1935, are confiscatory and do and will operate to deprive complainants of their property without due process of law are conclusions only and no facts are alleged to support the same. The defendants therefore say that subdivisions (e), (f), (g) and (h) of Paragraph Seven of the bill of complaint should be stricken as insufficient in law as well as other allegations in said bill, if any, undertaking to charge that the rates prescribed by the Act of the General Assembly of Georgia approved March 28, 1935, are confiscatory.

7

And making further answer to complainants' bill and the several paragraphs therein contained responsively and first referring to the first paragraph of said bill these defendants admit that the allegations of fact as set forth in said first paragraph are true; that is to say these defendants admit that they are named as parties defendant to said bill and that complainants' suit is brought against them, in their official capacities, respectively.

[fol. 43] 8

These defendants are without knowledge as to the allegations of fact set forth in the second paragraph of the bill of complaint and for that reason can neither admit nor deny the allegations therein made.

9

These defendants are without knowledge as to the allegations of fact set forth in subdivisions (a), (b), (c), and (d) of the third paragraph of the bill of complaint and for that reason can neither admit nor deny the allegations therein made.

Further answering the allegations of paragraph three and particularly referring to subdivision (e) thereof these defendants are without knowledge as to the allegations made in said subdivision (e) of paragraph three with reference to the amount of assistance by way of skilled help, floor supervisors, floormen, check off men, doormen, common laborers, porters, truckers, dumpers, and the like

necessary to be employed by complainants in the operation of a tobacco warehouse business and for that reason can neither admit nor deny the allegations therein made to that effect. These defendants, however, deny the allegation made under subdivision (e) of said paragraph three to the effect that prior to the opening of the marketing season it is necessary that each of complainants send into the territory served by his or its warehouse a man who is skilled in the growth, harvesting and curing of tobacco and defendants deny that such service is necessary or appropriate in order that the tobacco may reach the market in a condition which produces for the grower the best grade and price. In this connection defendants further say that if in fact any person, representative or representatives of complain- [fol. 44] ants or any of them are sent into the territory served by the warehouses respectively of complainants prior to the opening of the marketing season such persons customarily go solely for the purpose of soliciting business for the warehouse represented by them and if any expense is incurred in such solicitation such expense is not necessary to be incurred and should not be charged to the growers or the tobaccco industry in connection with the service rendered by complainants as warehousemen in the marketing of tobacco crops.

10

These defendants are without knowledge as to the allegations of fact set forth in paragraph four of the bill of complaint and for that reason can neither admit nor deny the same.

These defendants, however, are advised and upon such information allege that all of the expenses of removing the tobacco from the floor as well as expenses incurred in the handling of the same after the sale thereof by the auctioneer is borne by the purchaser of the tobacco and not the warehouseman.

11

These defendants admit the allegations of fact set forth in the fifth paragraph of the bill of complaint.

12

Defendants are without knowledge as to the matters and things set forth in the sixth paragraph of the bill of com-

plaint and for that reason can neither admit nor deny the same.

13

Defendants admit the allegation of fact set forth in the seventh paragraph of the bill of complaint.

14

Defendants deny the allegations of the eighth paragraph and the allegations made in the subdivisions (a), (b), (c), [fol. 45] (e), (f), (g), and (h) thereof.

Further answering and making particular reference to subdivision (d) of Paragraph eight defendants admit that the schedule of like charges which were paid to complainants during the last tobacco season and for a number of years prior thereto are as stated in said subdivision of said paragraph. These defendants, however, deny that said charges are fair and reasonable and they further deny that such charges have been satisfactory to the persons who grow and sell leaf tobaccco under the plan referred to and under which complainants operate, as is alleged in said subdivision (d) of paragraph eight.

15

Defendants deny the allegations of fact and conclusions of law as set forth in the ninth paragraph of the bill of complaint.

16

Defendants deny the allegations of fact and conclusions of law as set forth in the tenth paragraph of the bill of complaint.

17

Defendants deny the allegations of fact and conclusions of law as set forth in the eleventh paragraph of said bill.

18

Defendants deny the allegations of fact and conclusions of law as set forth in the twelfth paragraph of said bill.

19

Defendants deny the allegations of fact and conclusions of law as set forth in the thirteenth paragraph of said bill.

20

Defendants deny the allegations of the fourteenth paragraph of complainants' bill and in this connection they aver [fol. 46] that none of the officers named as defendants to said bill are charged under the laws of the State of Georgia with the duty of instituting criminal prosecutions in any case and none of the persons named as defendants to said bill are charged particularly with the duty of enforcing the Act of the General Assembly of Georgia approved March 28, 1935. On the contrary the Attorney General for the State of Georgia is charged only with the duty of acting as the legal adviser of the Executive Department of said State and of representing the State in the Supreme Court in all capital felonies and in civil and criminal cases in any court when required by the Governor so to do. The solicitors general of the several circuits, as officers of the State of Georgia, and the solicitors of the city courts of the several counties of said State, are only charged with the duty of representing the State as prosecuting officers after criminal prosecutions have been commenced or instituted in the manner prescribed by law and the sheriffs of the several counties are only charged with making arrests after warrants or other criminal processes have been sued out and placed in their hands for service. None of the persons named as defendants to complainants' bill are charged with the duty or responsibility of commencing or instituting criminal prosecutions and no such duty is required of any of said officers under the provisions of the Act of March 28, 1935, a copy of which appears in complainants' bill as Exhibit "A".

21

Defendants deny the allegations of fact and conclusions of law set forth in the fifteenth paragraph of the bill of complaint.

[fol. 47]

22

Defendants deny the allegations of fact and conclusions of law set forth in the sixteenth paragraph of complainants' bill.

23

Defendants deny the allegations of fact and conclusions of law set forth in the seventeenth paragraph of said bill.

24

Defendants deny the allegations of fact and conclusions of law set forth in the eighteenth paragraph of said bill.

25

The nineteenth paragraph, containing only the prayer of complainants, requires no answer.

26

These defendants are informed and believe and upon such information and belief charge that the warehousemen who appear as complainants herein constitute all of the warehousemen engaged in the tobacco warehouse business in the tobacco belt of the State of Georgia comprising approximately twenty counties in the southern portion of the State of Georgia. It affirmatively appears from the allegations of the complainants' bill that the complainants therein named are operating their several businesses under a common agreement with reference to the amount to be charged for services rendered and in such manner as to eliminate all manner of competition with reference to charges made for services rendered and to create a complete monopoly in the field covered by their operations respectively. These defendants are advised and believe and upon such information and belief further charge that said warehousemen are combined in what is known as a tobacco warehousemen's association and that the charges for services rendered by the warehousemen in said State since the time that the [fol. 48] growing of tobacco became an important industry have been fixed by agreement between the warehousemen themselves and that the growers and sellers of tobacco in said section have had no part in the fixing of the rates charged for the services rendered by said tobacco warehousemen. Defendant- further show that the sale of tobacco in the State of Georgia is conducted exclusively through the warehousemen. There is no other market for tobacco and no way by which the grower of tobacco can dispose of his crop except through sales made in tobacco warehouses and in the manner set forth in complainants' bill. The tobacco producers in the State of Georgia represent a large and paramount industry. In the year 1933 the cash

returns to the growers from the tobacco crop exceeded six million dollars. In 1934 the cash income to the growers was between six and seven million dollars and for the year 1935 the income to the growers from the tobacco crop will probably exceed seven million dollars. And said growers as aforesaid are unable to dispose of the crops of tobacco grown by them respectively except through a tobacco warehouse owned or controlled by one or more of the complainants herein and according to methods and at a price for services rendered fixed by complainants themselves. The business of conducting tobacco warehouses in the State of Georgia therefore is so monopolistic in its nature as to exclude and eliminate all competition between the warehousemen themselves as regards the matter of rates or charges for services rendered and for all these reasons complainants are not entitled to the protection of a court of equity in aid and in perpetuation of a monopolistic scheme or combine devised and carried on by complainants against the general public policy of the State.

[fol. 49] And having fully answered to all matters and things contained in said bill these defendants pray that the same be dismissed as to each and all of them and they have judgment for their costs in this behalf incurred.

M. J. Yeomans, Attorney General for the State of Georgia; O. H. Dukes, Assistant Attorney General for the State of Georgia; Lee W. Branch, E. D. Rivers, W. D. Dickerson, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ORGANIZING THREE-JUDGE COURT—Filed August 31, 1935

Application for interlocutory injunction pending final hearing on the merits, having been made in the above numbered and styled cause, and it appearing that said cause is an attack on the constitutionality of a statute of the State of Georgia, and within the purview of the Judicial Code, paragraph 266 (U. S. C. A. Title 28 paragraph 380);

It Is Considered, Ordered and Decreed that a statutory three-judge court be organized as contemplated by the Acts of Congress therein made and provided, Judicial Code, paragraph 266 (supra), and said court be and it is hereby organized. This court has called to its assistance Honorable Richard W. Walker, Circuit Judge, and Honorable William H. Barrett, District Judge, who, together with the undersigned, now constitute said statutory court.

Let This Order Be Entered on the minutes of the Court.

At Macon, Georgia, this the 24th day of August, 1935.

Bascom S. Deaver, U. S. District Judge, Middle District of Georgia.

[File endorsement omitted.]

[fol. 51] In United States District Court

[Title omitted]

Amendment to Original Bill of Complaint—Filed August 31, 1935

To the Honorable the Judges of the United States District Court for the Middle District of Georgia:

Now come C. R. Townsend and Park Bernard, a partnership known as Townsend & Bernard, doing business as Cook County Warehouse at Adel, Cook County, Georgia; W. L. Leath, doing business as Leath's Warehouse at Adel, Cook County, Georgia; H. A. Easley and E. H. Corey, a partnership known as Easley & Corey, doing business as Easley Warehouse at Baxley, Appling County, Georgia; E. Y. Wimbish and James E. Walker, Jr., a partnership known as Wimbish & Walker, doing business as Planters Warehouse at Baxley, Appling County, Georgia; W. B. Clark and J. J. Gibbons, a partnership doing business as Clark Warehouse at Baxley, Appling County, Georgia; A. P. Brantley and R. M. Sanford, a partnership known as R. M. Sanford & Company, doing business as Brantley Warehouse at Blackshear, Pierce County, Georgia; W. E. Fenner and Paul Morgan, a partnership known as Paul Morgan & Co., doing business at Big Z Warehouse at Blackshear, Pierce County, Georgia; E. E. Bullock and Dan Currin, a partner-
[fol. 52] ship doing business as Farmers Warehouse at Blackshear, Pierce County, Georgia; W. H. Soaper, R. A.

Hughes, and Johnnie Wilkins, a partnership doing business as Soaper Warehouse at Douglas, Coffee County, Georgia; W. G. Vann and J. S. Bernard, a partnership doing business as Red Warehouse at Douglas, Coffee County, Georgia; F. S. King, Leon Oettinger, and L. A. Barker, a partnership doing business as O. K. Tobacco Warehouse at Douglas, Coffee County; Georgia; J. M. Easterly and Frank Emerson, a partnership doing business as Farmers Brick Warehouse at Douglas, Coffee County, Georgia; J. H. McLean and R. A. George, a partnership known as McLean & George, doing business as Growers Warehouse at Douglas, Coffee County, Georgia; J. E. O'Hara and R. Y. Scruggs, a partnership known as O'Hara & Scruggs, doing business as Gold Leaf Warehouse at Hahira, Lowndes County, Georgia; H. J. Hurdle, doing business as Farmers Independent Warehouse at Hahira, Lowndes County, Georgia; J. R. Smith and Hamp Powell, a partnership known as Smith & Powell, doing business as Hahira Warehouse at Hahira, Lowndes County, Georgia; W. L. House, doing business as Farmers Warehouse at Hazlehurst, Jeff Davis County, Georgia; S. A. McConkey and H. I. Johnson, a partnership known as McConkey & Johnson, doing business as Planters Warehouse at Hazlehurst, Jeff Davis County, Georgia; C. H. McGowan, doing business as Metter Warehouse at Metter, Candler County, Georgia; W. P. Moore and B. T. Cannon, a partnership doing business as Growers Warehouse at Metter, Candler County, Georgia; W. E. Fenner and J. B. Fenner and R. R. Meador, a partnership doing business as Farmers Warehouse at Moultrie, Colquitt County, Georgia; H. B. Wallace and L. R. Barber, a partnership doing business as [fol. 53] Peoples Warehouse at Moultrie, Colquitt County, Georgia; C. K. Smith and F. R. Pidcock, Jr., a partnership doing business as Central Warehouse No. 1 and Central Warehouse No. 2, both located at Moultrie, Colquitt County, Georgia; Blake's Tobacco Warehouse, Inc., a corporation under the laws of Florida, operating Blake's Tobacco Warehouse at Moultrie, Colquitt County, Georgia; Fred W. Brown and Charles H. McDaniel, a partnership known as Brown & McDaniel, doing business as Planters Warehouse at Nashville, Berrien County, Georgia; C. B. Strickland and George E. Love, a partnership known as Strickland & Love, doing business as Independent Warehouse at Nashville, Berrien County, Georgia; W. M. Talley and Roy Talley, a partnership known as Talley Brothers, doing business as

Union Warehouse at Nashville, Berrien County, Georgia; J. D. Rogers, trading as J. D. Rogers Company operating The Big Dixie Warehouse at Pelham, Mitchell County, Georgia; J. E. Jones and W. C. Spence, a partnership known as Jones & Spence, operating Pelham Warehouse at Pelham, Mitchell County, Georgia; W. E. Cobb and H. P. Foxhall, a partnership doing business as Cobb & Foxhall Warehouse at Statesboro, Bulloch County, Georgia; R. E. Sheppard, doing business as Sheppard's Warehouse at Statesboro, Bulloch County, Georgia; W. E. Fenner and C. G. Weathersby, a partnership doing business as Fenner's Warehouse at Tifton, Tift County, Georgia; T. B. Smothers and O. G. Calhoun, a partnership doing business as Smothers & Calhoun and operating Banner Warehouse at Tifton, Tift County, Georgia; Tifton Investment Company, a corporation under the laws of Georgia, operating the Twin Brick Warehouse and the Farmers Warehouse, both located in Tifton, Tift County, Georgia; E. L. Moore and B. T. Cannon, [fol. 54] a partnership doing business as Alliance Warehouse at Valdosta, Lowndes County, Georgia; L. E. Knott, doing business as Savannah Avenue Warehouse at Valdosta, Lowndes County, Georgia; N. B. Smith, F. H. Wright, George D. Foxworth and Jeff J. Cozart, a co-partnership doing business as Nat Smith's warehouse at Valdosta, Lowndes County, Georgia; B. B. Saunders, doing business as B. B. Saunders' Warehouse at Valdosta, Lowndes County, Georgia; L. C. Pruitt and J. K. Larkins, a partnership doing business as Farmers Tobacco Warehouse at Waycross, Ware County, Georgia; Waycross Tobacco Warehouse Company, Inc., a corporation operating the Waycross Tobacco Warehouse at Waycross, Ware County, Georgia; Jack Meadows, J. B. O'Connor, Will Brown and W. M. Bowland, a partnership doing business as Vidalia Tobacco Warehouse No. 1 and Vidalia Tobacco Warehouse No. 2, both located at Vidalia, Toombs County, Georgia; J. C. Vann and W. W. Bernard, a partnership doing business as Vann's Tobacco Warehouse No. 1 and Vann's Tobacco Warehouse No. 2, both located at Vidalia, Toombs County, Georgia; and in pursuance of the permission granted by this Court in its order entered in this cause on July 27, 1935, complainants respectfully file this their amendment to their original bill of complaint, and for amendment allege:

1. Each and all of the complainants allege that they not only have a common interest in the question of the reasonableness of the rates which the General Assembly of Georgia of 1935 undertook to prescribe by its purported Act, copy of which is attached to the original bill of complaint marked "Exhibit A", but each and all of them have a like interest in the said rates themselves. The rates which the General Assembly of Georgia undertook to so prescribe are applicable (if the General Assembly have the power to fix [fol. 55] any rates for the business described in the original bill) not to one person doing the business described in said Act, but to each and all of the persons doing such business within the State of Georgia, without regard to the circumstances and conditions under which each of the complainants operates; nor does the said Act take into account the variations of the circumstances and conditions surrounding the business involved, as these circumstances and conditions are changed by causes beyond the control of the complainants.

2. Complainants aver that the questions involved in this cause are of common or general interest to many persons constituting a class too numerous to bring them all before the Court.

3. Complainants allege that the defendants, C. W. Culpepper, who resides at Lyons, Toombs County, Georgia; O. L. Griner, who resides at Nashville, Berrien County, Georgia; Adolph (R. C.) Relihan, who resides at Douglas, Coffee County, Georgia; J. M. Walker, who resides at Tifton, Tift County, Georgia; J. L. Spivey, who resides at Valdosta, Lowndes County, Georgia; and D. L. Evans, who resides at Hazlehurst, Jeff Davis County, Georgia; and who have accepted service of the original bill in this cause, are growers of leaf tobacco and are interested from the growers' standpoint in the selling and handling of leaf tobacco in the several markets for the sale of such leaf tobacco in the State of Georgia.

Complainants make the above named persons parties to this cause not only in their personal capacities and as sheriffs of their respective counties, but also as members of the class of growers of leaf tobacco, and therefore, as representatives of the class of sellers of such tobacco in [fol. 56] the so-called tobacco warehouses in the State of

Georgia which are referred to and described in the original bill.

4. Complainants allege that the purported Act of the General Assembly of Georgia hereinbefore referred to and copy of which is attached to the original bill marked "Exhibit A," is, in addition to the reasons set forth in said original bill, unconstitutional and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, especially the due process clause therein contained, for that:

(a) The State of Georgia, acting through its Legislative Department, had and has no jurisdiction over the subject-matter of said purported Act;

(b) Nor did the State of Georgia, acting as aforesaid, have the right or jurisdiction to fix or undertake to fix the charges to be made by complainants or any of them, for, or in connection with, the business being conducted by them;

(c) Said purported Act is unreasonable, arbitrary and capricious and same cannot be sustained when measured by the facts relevant thereto;

(d) The said purported Act is not a reasonable exertion of governmental authority for the following reasons, to-wit:

(1) Said purported Act was adopted without an investigation or examination of the relevant facts surrounding the business called that of tobacco warehousemen in Georgia;

(2) There had been no Board or other body created to ascertain the facts surrounding this particular business, to ascertain the manner in which it was conducted, the cost thereof, the returns thereon, and the relation between the cost of the business done and the rewards received therefor.

[fol. 57] (3) Said Act was adopted without having provided to the persons at interest a means of a hearing thereon; without the right to have witnesses; and without proper investigations and adequate determination of the facts.

(4) The said Act fixing the prices to be charged by complainants for services rendered as described in the original

bill of complaint has no relation to the public health; and is not based upon any requirement of public needs; and the regulation of price has no real or substantial relation to any object or purpose sought to be attained by said Act; and it has no purpose to the rectifying of which price regulation is a reasonable or appropriate means.

(5) Said purported Act, in so far as it undertakes to control prices, is arbitrary and irrelevant to the policy of the Legislature and an unnecessary and unwarranted interference with individual right of contract.

(6) For that the prices undertaken to be fixed by said purported Act have the effect of making a severe cut in the price- which have been for a number of years used throughout the State of Georgia for this purpose; and they will not provide adequate compensation to complainants for the time, service, and risk attendant upon the conduct of their said respective businesses and will not provide an adequate reward or return upon the investments and outlays made by them for the purpose of enabling them to carry on their said business.

(7) For that the aforementioned purported enactment of the General Assembly of Georgia was not made in response to any emergency.

(8) For that said purported enactment of the General Assembly of Georgia does not undertake to determine or [fol. 58] declare that the business in which complainants are engaged is affected with a public interest in such manner and to such extent as to justify in the circumstances surrounding their business the fixing of prices for their services and for the use of their properties.

(9) For that the said purported enactment of the General Assembly of Georgia undertakes to make a hard and fast schedule of charges which all of the complainants may charge for the use of their properties, businesses, their time and the time of their employees. There are three elements in the prices undertaken to be fixed by said purported Act, namely (a) auction fees for selling at auction the piles of tobacco; (b) fee for weighing and handling the tobacco sold; and (c) commission on the gross sales of leaf tobacco. Thus, the reward to complainants for the first of those elements, to-wit, auction fees, is fixed regardless of the price

which the tobacco many bring. The reward for weighing and handling the tobacco sold is likewise based solely on the weight of the piles of tobacco and the reward of the complainants for all other services is based solely upon the gross sales; that is, the gross amount of money brought by the sale of the tobacco. The cost of the auction fees to the complainants is not a constant and fixed item. It varies under the influence of divergent circumstances. The cost of weighing and handling tobacco likewise varies very greatly with the divergent circumstances based on amount of tobacco grown in a season and handled in each warehouse. The commission varies according to the quantity and quality. One thousand piles of one grade of tobacco may bring no more in gross sales than five hundred piles of another grade. The quality of the tobacco depends on the season; that is, whether there is enough or too much rain, whether [fol. 59] the tobacco has suffered from insects, cut worms or disease. It also varies with the amount of land planted and that in turn varies according to not only the law of supply and demand but in recent years and now according to the concept of the United States Government as to the amount of land which should be planted in the different grades of tobacco.

Every element which goes to make up the rewards undertaken to be fixed by the General Assembly of Georgia of 1935 by the purported Act fluctuates. Probably no one of them is constant from year to year. Yet the purported Act is hard and fast; it permits no reduction or change in those prices whatever may be the operation of any one or all of the forces toward reducing the price or increasing the cost of selling, reducing the volume of the crop, or affecting the quality thereof.

To illustrate the fluctuation in the production of tobacco in Georgia and the value thereof, it is alleged that the gross sales, the value, and the average price per pound of the tobacco for the six years from 1930 to 1935, both inclusive, are as follows:

Year	Gross Sales	Value	Average Price per Pound
1930	106,483,019 lbs.	$10,501,228.63	9.86 cents
1931	60,881,696 lbs.	3,901,841.66	6.41 cents
1932	12,171,179 lbs.	1,267,211.07	10.40 cents
1933	59,853,963 lbs.	6,764,125.31	11.30 cents
1934	33,623,475 lbs.	6,299,751.96	18.73 cents
1935	72,922,458 lbs. (Approximately)	13,845,274.67 (Approximately)	18.98 cents (Approximately)

Under the purported Act herein complained of the reward to complainants will be upon the same unit basis when the [fol. 60] crop is very large as when it is very small. Complainants represent that to provide a fixed charge in such fluctuating circumstances is necessarily arbitrary and unreasonable.

The purported Act creates no Board, Commission, or Committee with authority to consider the circumstances of each season and as to whether those circumstances justify a greater or lesser charge than the rates fixed by the purported Act. There is no power of the State to which any of the complainants may apply for relief against any of those changing circumstances and under said purported Act if it be lawful. A hard and fast rule undertaking to fix the reward to complainants has been set up by said purported Act to meet changing and varying circumstances. The said purported Act cannot, under these circumstances, have any fair relation to the conditions as they change from year to year. They are based upon a pure hazard, are untested by experience, and are based upon circumstances wholly unfolded at the time they were made. Such an Act is of necessity arbitrary, unreasonable and oppressive, and being arbitrary, unreasonable and oppressive, is in violation of the Fourteenth Amendment to the Constitution of the United States upon which complainants rely.

5. Complainants allege that their respective businesses were and are carried on with efficiency, with as low costs as practicable, and at the charges in 1934 they were able to earn inadequate reward for their services and inadequate return, if any, upon their properties devoted to the conduct of the business herein described. The charges which the aforementioned purported Act of the General Assembly of Georgia undertakes to enforce will reduce the reward of complainants by approximately 25 per centum when compared on a unit basis.

[fol. 61] 6. The prices of staple commodities of life have substantially increased since the last crop of tobacco was sold in Georgia. For instance, foodstuffs in July, 1935, are as complainants are informed and believe approximately thirteen (13%) per cent. higher than they were in July, 1934; rents are approximately eight and two-tenths (8.2%) per cent. higher, and clothing three and six-tenths (3.6%)

per cent. higher. Much of these increases have come since the Act complained of was adopted. They materially affect the cost of doing the respective businesses of complainants. The hard and fast prices fixed or undertaken to be fixed by the purported Act afford no means of reflecting these changes or of protecting against them.

7. The value of the physical properties devoted by the complainants to the tobacco warehouse business in Georgia, including lands, buildings, and equipment, exceeds one million dollars. In addition to this there is the value of the warehousemen's time, their skill and experience which they devote to this business, this varying with the individual, but it is property and as property must yield a reasonable return. Each warehouseman also uses a large amount of cash as working capital in the operation of the business. This amount varies with the volume of each warehouse, but the total working capital necessary to carry on this business is in excess of the sum of $500,000.00.

The gross income of the business is less than six per cent. (6%) of the value of the tobacco crop. The Georgia 1934 crop of tobacco was 38,027,176 pounds valued at $7,131,-685.15. The 1933 crop was in excess of 60,000,000 pounds but the value thereof was less than $7,000,000.00.

[fol. 62] The gross expenses of operating the tobacco warehouse business in Georgia are in excess of four and one-half per cent. (4½%) of the value of the crop.

If the scale of charges sought to be applied by the purported Act of the General Assembly of Georgia of 1935, had been in force during the 1934 tobacco selling season, the gross income of the business would have been reduced by not less than twenty-five per cent. (25%), so that on the minimum basis of a million and one-half dollars, which is merely the value of the physical properties used, there would be no return on this value, as expenses would have equalled income. It is alleged, however, that the value of the properties used, including the personal element of time, skill, and experience of the warehousemen, is far greater than a million and one-half dollars and the gross expenses exceed four and one-half per cent. (4½%) of the value of the tobacco crop.

8. Complainants allege that when the gross return has been taken into account as to each of them and gross ex-

penses have been deducted therefrom, including an adequate reward to those who manage the business, and likewise including those expenses which have to do with the getting of the business to the complainants' respective warehouses by aiding the farmers or growers in the planting, growing, curing, and grading of the tobacco and after deducting normal depreciation on property and equipment, the reward to complainants under the scale of charges applicable to this season will not yield to them in excess of two and one-half per cent. (2½%) on their respective properties; and the reward to complainants under the scale of charges undertaken to be enforced by the said purported Act of the General Assembly of Georgia of 1935 will greatly reduce complainants' reward below the modest figure above referred to.

[fol. 63] 9. Complainants respectfully allege that said reward is unjust, unreasonable and confiscatory for that complainants are required to use their time, their properties, their liquid capital and their equipment and their businesses to carry on the tobacco warehouse business described in said original bill of complaint.

10. Wherefore, complainants waive answer under oath of the defendants and, in addition to the prayers of their original bill, respectfully pray:

(a) That the defendants named in paragraph 3 of this amendment be made parties hereto, not only in their personal capacities and as sheriffs of their respective counties, but also as members of the class of growers of leaf tobacco and, therefore, as representatives of the class of sellers of such tobacco in the so-called tobacco warehouses in the State of Georgia, which are referred to and described in the original bill.

(b) Complainants pray that this amended bill be filed and that the defendants be required to plead to said bill as amended.

(c) That the defendants, in their personal capacities and in their representative capacities, and as representatives of all the growers, be restrained and enjoined from undertaking to enforce the purported Act of the General Assembly of the State of Georgia, copy of which is attached to the original bill as Exhibit "A".

(d) That these prayers be in addition to the prayers of the original bill.

[fol. 64] (e) Complainants pray for general relief.

Respectfully submitted, Wilcox, Connell & Wilcox, J. O. Gibson, Alston, Alston, Foster & Moise, Attorneys for Complainants.

August 29, 1935.

Duly sworn to by B. B. Saunders. Jurat omitted in printing.

[fol. 65] It Is Ordered that, subject to objection, the foregoing amendment be filed, and it is likewise ordered that the defendants named in paragraph 3 of said amendment, who are parties to this cause, be likewise made parties as members of the class of growers of leaf tobacco in Georgia and, therefore, as representatives of the class of sellers of such tobacco in the so-called tobacco warehouses in the State of Georgia, which said warehouses are referred to and described in the original bill.

Let a copy of said amendment and of this order be served on counsel of record for the defendants.

This 31 day of August, 1935.

Bascom S. Deaver, Judge U. S. District Court, Middle District of Georgia.

[File endorsement omitted.]

[fol. 66] In United States District Court

[Title omitted]

Joint and Several Supplemental Answer to Amended Bill of Complaint—Filed September 14, 1935

Come now M. J. Yeomans, Attorney General for the State of Georgia; W. C. Forehand, Solicitor General of the Tifton Judicial Circuit; George R. Lilly, Solicitor General of the Southern Judicial Circuit; H. C. Morgan, Solicitor General of the Alapaha Judicial Circuit; W. B. Gibbs, Solicitor General of the Brunswick Judicial Circuit; John S. Gibson, Solicitor General of the Waycross Judicial Circuit; M. L. Cross, Solicitor General of the Middle Judicial Circuit;

Robert B. Short, Solicitor General of the Albany Judicial Circuit; William G. Neville, Solicitor General of the Ogeechee Judicial Circuit; Paul D. Leverett, Solicitor of the City Court of Colquitt County; Hamilton Burch, Solicitor of the City Court of Valdosta; L. C. Anderson, Solicitor of the City Court of Metter; D. C. Jones, Solicitor of the City Court of Statesboro; B. P. Jackson, Solicitor of the City Court of Lyons; J. B. Moore, Solicitor of the City Court of Baxley; John H. Quarterman, Solicitor of the City Court of Waycross; J. R. Walker, Jr., Solicitor of the City Court of Blackshear; O. B. McElvey, Solicitor of the City Court of Camilla and of the City Court of Pelham; W. D. Dicker-
[fol. 67] son, Solicitor of the City Court of Douglas; J. M. Walker, Sheriff of Tift County; H. L. Padgett, Sheriff of Appling County; H. M. Carter, Sheriff of Pierce County; R. C. Relihan, Sheriff of Coffee County; D. L. Evans, Sheriff of Jeff Davis County; M. E. Trapnell, Sheriff of Candler County; O. L. Griner, Sheriff of Berrien County; W. H. Baggs, Sheriff of Mitchell County; J. C. Tilmon, Sheriff of Bulloch County; C. W. Culpepper, Sheriff of Toombs County; H. J. Sweat, Sheriff of Ware County; Virgil Rooks, Sheriff of Cook County; J. L. Spivey, Sheriff of Lowndes County; and T. V. Beard, Sheriff of Colquitt County, defendants named in the above stated cause and file this their joint and several supplemental answer to the amended Bill of Complaint and for answer thereto say:

1

Defendants jointly and severally renew and reassert as against the Bill of Complaint as amended each ground or objection made and urged to the original Bill of Complaint as set forth in Paragraphs 1, 2, 3, 4, 5, and 6 of their original answer and say that said Bill of Complaint as amended is insufficient and should be dismissed on the several grounds and for the several reasons set out in said paragraph of the original answer.

2

There is no equity in complainants' bill as amended and the same should be dismissed.

3

The allegations of Paragraph 4 of complainants' amended Bill with the several subdivisions thereof should be stricken

as insufficient and as setting forth no cause of action or ground of relief for that the allegations of said paragraph of said amended Bill with the several subdivisions thereof fail to show that the Act of the Legislature of the State of [fol. 68] Georgia referred to and complained of is repugnant to and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States as alleged and defendants say that said paragraph and the several subdivisions thereof should be stricken as setting forth no cause of action or ground for relief. This motion to strike is submitted with reference to said Paragraph 4 and severally to each subdivision or paragraph thereof.

4

Defendants say that better particulars of matters and things stated in the Seventh Paragraph of the amended Bill should be required and ordered by the Court in that:

(a) It is generally alleged in said paragraph that the value of the physical properties devoted by complainants to the tobacco warehouse business in Georgia, including lands, buildings, and equipment exceed one million dollars and it is not alleged in connection therewith or elsewhere in the said original or amended Bill where the property referred to is located or of what such properties consist or what equipment it is claimed is included in said alleged valuation, or what interest complainants have in said land and buildings.

(b) It is further generally alleged in said paragraph that there is an additional value in the warehousemen's time, skill and experience which they claim to devote to said business and it is not alleged in connection therewith or elsewhere in said bill what it is claimed is the amount of such value, skill or experience in any particular case or with reference to any particular matter or business.

(c) By reason of the indefiniteness of the allegations of the Seventh Paragraph of said amended Bill in the particulars referred to defendants are unable to prepare their defense and complainants should be required to submit a more definite statement of the particulars and matters referred to.

[fol. 69]

5

The allegations of fact as set out in Paragraph Seven of the amended Bill aside from the conclusions made when

taken alone or in connection with other allegations of fact set out in the original Bill or the amendment are insufficient to show that the scale of prices as fixed in said Act would result in confiscation of complainants' property or would operate to deprive them of such property without due process of law.

6

And making further answer to complainants amended Bill and the several paragraphs therein contained responsively these defendants first referring to the first paragraph of said amended bill say that they deny the allegations of fact and conclusions of law therein made.

7

Paragraph Two of the amended Bill sets forth only conclusions of law which are denied.

8

Answering the Third Paragraph of the amended Bill these defendants admit that C. W. Culpepper, O. L. Griner, R. C. Relihan, J. M. Walker, J. L. Spivey, and D. L. Evans are growers of leaf tobacco and are interested from the grower's and seller's standpoint in the selling and handling of leaf tobacco in said market for the sale of such leaf tobacco in the State of Georgia as alleged. Defendants, however, deny the right of complainants to have said persons named as parties defendant to said Bill either in their personal capacities or as members of a class of growers of leaf tobacco.

9

Answering the Fourth Paragraph of complainants' amended Bill these defendants deny the allegations therein made to the effect that said Act of the General Assembly [fol. 70] of Georgia referred to and a copy of which is attached to the original Bill as Exhibit "A" is unconstitutional and in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States or otherwise, and further answering and making particular reference to the several subdivisions of said paragraph Four these defendants say:

(a) They deny that the State of Georgia acting through its legislative department had and has no jurisdiction over

the subject matter of said purported Act as is alleged in subdivision (a) of said Paragraph Four.

(b) They deny the allegations as set forth and contained in subdivision (b) of Paragraph Four and say that it is not true that the State of Georgia did not have the right or jurisdiction to fix or undertake to fix the maximum charges to be made by complainants or any of them for or in connection with the business conducted by them respectively.

(c) These defendants deny the allegations set forth in subdivision (c) of Paragraph Four and say that it is not true that the Act referred to is unreasonable, arbitrary and capricious and it is not true that the same cannot be sustained when measured by the facts relevant thereto.

(d) Defendants deny the allegations set forth in subdivision (d) of Paragraph Four of said amended Bill and the several paragraphs thereunder numbered one to nine inclusive and they particularly deny that said Act is not a reasonable exercise of Governmental authority for any of the reasons set out thereunder.

As to Paragraph numbered (1) these defendants say that it is not true as therein alleged that said purported Act was adopted without an investigation or examination of the relevant facts surrounding the business called that of tobacco warehousemen in Georgia.

[fol. 71] As to Paragraph numbered (2) defendants admit that no Board or other body was created under and by the terms of said Act charged with the duty of ascertaining the facts surrounding the particular business or of ascertaining the manner in which it was conducted, the costs thereof, the returns thereon, or the relation between the cost of business done and the rewards received therefor but in this connection they say that it was wholly unnecessary for the Legislature of the State of Georgia to create such Board.

These defendants deny the Paragraph numbered (3) under said subdivision (d) and in this connection say that the Act of the General Assembly of Georgia referred to was introduced, considered, adopted and approved in the same manner that Acts of the General Assembly are usually introduced, considered, passed and adopted and they say that such Act is not invalid or unconstitutional for any of the reasons set out in said paragraph.

Defendants deny all of the allegations set out in the paragraph designated (4) under subdivision (d) and in this connection say that said Act referred to was introduced, considered, passed, adopted, and approved in the proper exercise of the police power reserved in the State of Georgia under constitutional provisions State and Federal applicable thereto.

Defendants deny the paragraph designated (5) under said subdivision (d) and as well the conclusions of law set forth therein.

Defendants deny the allegations set forth in the paragraph designated (6) under subdivision (d) as aforesaid.

With reference to the paragraph designated (7) under subdivision (d) of said Paragraph Four these defendants say that it is not true that said purported Act of the General Assembly of Georgia was not made in response to any [fol. 72] emergency but on the contrary they say there was urgent public need therefor and particularly so in view of the fact that complainants had by agreement either express or implied entered into a combination for the purpose of controlling the prices to be charged in connection with the operation of tobacco warehouse businesses in the State of Georgia and for the purpose of eliminating competition in the fixing of prices and charges for services rendered by such warehouses.

Answering the paragraph designated (8) under subdivision (d) of Paragraph 4 these defendants say that while it may be true that the Act referred to does not by its specific terms declare that the business of tobacco warehousemen is affected with a public interest at the same time these defendants say that such business is in fact affected with a public interest and that the Legislature of the State of Georgia in considering and adopting the Act referred to determine and in effect declare that it was so affected with a public interest, and the said Act is in all respects valid and constitutional and is not subject to the objection urged by complainants in said paragraph.

These defendants deny the allegations set forth in the paragraph designated (9) under subdivision (d) of Paragraph Four and say that said Act is not invalid or unconstitutional for any of the reasons or conclusions therein set out. The said Act by its terms only purports to fix the maximum charges to be made by tobacco warehousemen in the State of Georgia for services rendered by them

and is not invalid or unconstitutional by reason of any of the matters and things set out in said paragraph or by reason of the conclusions therein set forth.

10

These defendants deny the allegations of the Fifth Paragraph of said amended Bill.

[fol. 73] 11

These defendants deny the allegations of the Sixth Paragraph of said amended Bill.

12

These defendants deny the allegations of the Seventh Paragraph of said amended Bill and say that it is not true that the value of the physical property devoted by the plaintiff's to the tobacco warehouse business in Georgia, including lands, buildings, and equipment exceed one million dollars as alleged. It does not appear from said amended Bill the amount of the value it is claimed complainants have in their time, skill and experience which they devote to said business and accordingly these defendants are unable to answer said allegation responsively. The deny that the working capital devoted to the warehouse business in Georgia by complainants amounts to as much as five hundred thousand dollars and in this connection they say that whatever amount, if any, may be devoted by them to the warehouse business in said State is so devoted for only the short time not exceeding thirty days in each year. All other allegations as contained in said paragraph Seven are denied.

13

Defendants deny each and all of the allegations of fact and conclusions of law as set out and contained in the Eighth Paragraph of the amended Bill.

14

Defendants deny each and all of the allegations of fact and conclusions of law set out in the Ninth Paragraph of complainants' amended Bill.

15

The Tenth Paragraph of complainants' amended Bill contains only the prayer and while it sets forth no allega-

[fol. 74] tions of fact necessary to be denied these defendants say that complainants are not entitled to the relief prayed for either in the original Bill of Complaint or said amended Bill as set forth under said Paragraph Ten.

16

Defendants re-assert and re-affirm all grounds of defense as set out in the original answer filed by them in said cause and particularly the ground of defense as set out in Paragraph 26 of said answer. In this connection, however, they show that in estimating the value of the tobacco crop for the year 1935 at approximately $7,000,000.00 they now show that the value of said crop was approximately $14,000,000.00.

And having fully answered to all matters and things contained and set forth in said amended Bill these defendants pray that the same, together with said original Bill, be dismissed as to each and all of them and that they have judgment for their costs in this behalf incurred.

M. J. Yeomans, Attorney General for the State of Georgia; O. H. Dukes, Assistant Attorney General for the State of Georgia; L. W. Branch, Quitman, Georgia; E. D. Rivers, Lakeland, Georgia; W. D. Dickerson, Douglas, Georgia, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 75] IN UNITED STATES DISTRICT COURT

[Title omitted]

SECOND AMENDMENT TO ORIGINAL BILL OF COMPLAINT—Filed January 20, 1936

To the Honorable the Judges of the United States District Court for the Middle District of Georgia:

Now come the complainants named in the original bill of complaint and the first amendment thereto, and in pursuance of the permission granted by this Honorable Court, respectfully file this their second amendment to their original bill of complaint, and for amendment allege:

1. Complainants allege that H. B. Wallace and L. R. Barber, who are complainants herein, operated during the tobacco marketing season of 1935 an additional warehouse at Moultrie, Georgia, known as Sheppard-Smith Warehouse.

2. Complainants aver that when the leaf tobacco involved in this cause is brought into their respective warehouses it is immediately placed upon the floors in long rows, as has been described in the original bill of complaint, for the purpose of sale, to be shipped out of the State of Georgia by the purchaser. There is no tobacco manufacturing place in Georgia and none of the tobacco which is [fol. 76] sold by the complainants or any of them, is manufactured in the State of Georgia, and there was not in 1935. It was and it is the intent and purpose of the sales which are held at the Georgia tobacco warehouses to sell the leaf tobacco to corporations or persons living out of the State of Georgia who conduct a factory or factories for the manufacture of leaf tobacco; that the shipments are made out of the State of Georgia as soon as the sales are complete; that the sales themselves are in interstate commerce or in foreign commerce; that the purchases are in interstate commerce or foreign commerce; that the entire transactions are in interstate commerce or foreign commerce; and the State of Georgia is without power to tax or otherwise put a burden upon or regulate that interstate or foreign commerce.

Wherefore, complainants pray that on the additional ground herein set out, it be held and determined by this Honorable Court that the defendants have and had no right or power to enforce any of the taxes or charges sought to be levied by them and fully set out in the original bill of complaint.

Respectfully submitted, J. O. Gibson, Wilcox, Connell & Wilcox, Alston, Alston, Foster & Moise, Attorneys for Complainants.

January 20, 1936.

[fol. 77] *Duly sworn to by R. W. Goodman. Jurat omitted in printing.*

[fol. 78] Order

It is Ordered that, subject to objection, the foregoing amendment be filed.

Let a copy of said amendment and of this order be served on counsel of record for the defendants.

This 20 day of January, 1936.

Bascom S. Deaver, Judge United States District Court, Middle District of Georgia.

[File endorsement omitted.]

[fol. 79] In United States District Court

[Title omitted]

Joint and Several Supplemental Answer to the Amendment Proposed by Complainants and Allowed by the Court Subject to Objection on the 20th Day of January, 1936—Filed January 29, 1936

Now come the defendants herein and file this their joint and several answer to the amendment proposed by complainants and allowed by the court subject to objection on the 20th day of January, 1936, and to the bill of complaint as amended and for answer thereto say:

1

Defendants jointly and severally renew and reassert as against the bill of complaint as amended each ground of objection made and urged to the original bill of complaint as set forth in paragraphs 1, 2, 3, 4, 5, and 6 of their original answer and also as set forth in paragraphs 1, 2, 3, 4, 5, and 6 of their supplemental answer and say that said bill of complaint as amended is insufficient and should be dismissed on the several grounds and for the several reasons set out in said paragraphs of the original and supplemental answer.

[fol. 80] 2

The said bill of complaint as amended by the proposed amendment allowed subject to objection as aforesaid is insufficient and sets forth no cause of action; there is no equity in complainants' bill as amended and the same should be dismissed.

3

Paragraph 2 of the proposed amendment presented and allowed subject to objection on the 20th day of January, 1936, should be stricken as insufficient and as setting forth no cause of action or ground of relief for that the allegations of said amendment are insufficient to show that the business of a tobacco warehouseman in the State of Georgia is a part of interstate or foreign commerce; and said allegations are further insufficient to show that the State of Georgia is without power to regulate the business of tobacco warehouseman in said State. Nothing is alleged to show that the Act of the legislature of Georgia approved March 28, 1935, and described in complainants' original bill undertakes to assess any tax whatsoever or otherwise burdens or undertakes to regulate interstate or foreign commerce if in fact such transaction be a part thereof and nothing is disclosed by the allegations of said amendment of the original bill to show that the legislature of the State of Georgia was without power or authority to enact said law. The allegations of paragraph 2 therefore of said proposed amendment are entirely irrelevant, immaterial, constitute no cause of action and should be stricken.

4

And further answering said amendment these defendants say that they are without knowledge as to the matters and [fol. 81] things set out and alleged in paragraph 1 of said amendment and for that reason they can neither admit nor deny the same.

5

Answering paragraph 2 of said amendment these defendants admit that when leaf tobacco is brought into the respective warehouses of complainants it is placed upon the floor in long rows for the purpose of sale as described in the original bill of complaint but they deny that such tobacco is so placed to be shipped out of the State of Georgia by the purchaser as alleged, and they deny that the shipment of said tobacco, if in fact that is done after the sale, constitutes any part of the sale or is connected therewith. Defendants, for lack of knowledge in that regard, are unable to admit or deny the allegation to the effect that there

is no tobacco manufacturing plants in Georgia and that none of the tobacco which is sold by complainants is manufactured in the State of Georgia and that such was the case in 1935. They deny, however, that it was the intent and purpose of the sales held in the Georgia tobacco warehouses to sell said tobacco to corporations or persons living out of the State of Georgia, who conduct a factory or factories for the manufacture of leaf tobacco as alleged in said amendment and they deny that shipments are made out of the State of Georgia as soon as the sales are complete but on the contrary much of said tobacco after the sale by warehousemen is transported by the purchaser either to Tifton, Georgia, or Valdosta, Georgia, and there dried and processed before it is manufactured and just how long it remains in the State of Georgia after the sale by the ware-[fol. 82] houseman, if indeed it is shipped out of said State at all, these defendants are unable to state, and they deny that the sales of said tobacco themselves are in or constitute a part of interstate or foreign commerce. They further deny that the purchases are in interstate or foreign commerce or that the entire transactions are in interstate or foreign commerce and they deny that the State of Georgia is without power to enact the regulatory statute which complainants attack in this case for any of the reasons set out in the second paragraph of said amendment or any other cause.

And having fully answered to all matters and things contained and set forth in said amendment these defendants pray that the same, together with said original bill, be dismissed as to each and all of them and that they have judgment for their cost in this behalf incurred.

M. J. Yeomans, Attorney General of Georgia; O. H. Dukes, Assistant Attorney General of Georgia; L. W. Branch, Quitman, Georgia; E. D. Rivers, Lakeland, Georgia; W. D. Dickerson, Douglas, Georgia, Attorneys for Defendants.

[fol. 83] *Duly sworn to by M. J. Yeomans. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 84] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPOINTING EXAMINER, ETC.—Filed September 5, 1935

Application for interlocutory injunction suspending and restraining the enforcement, operation, and execution of a statute of the State of Georgia have been made, and it appearing to the court as constituted by the statutes therein made and provided that voluminous oral testimony will be presented, and that documentary evidence involving accounts and books, and the operation of complainants' businesses will also be in evidence;

Now, on motion of counsel of record for both sides, it is Considered, Ordered and Decreed by the court that

1. The Honorable J. N. Talley be, and he is hereby, appointed Special Examiner, to hear the testimony of complainants and defendants at such places and times as he may designate, whether within or without the territorial jurisdiction of this court. The Examiner is empowered with all of the rights, powers, and privileges given to Examiners by the statutes and rules of court in such cases made and provided. He is directed to reduce the testimony [fol. 85] in writing, employing a stenographer where necessary, and to receive objections to testimony by either party, which shall be entered in the transcript, but not decided, and the transcript of the testimony, in question and answer form, shall be returned into court.

2. The Examiner is directed to proceed forthwith to take testimony. The transcript of the testimony shall be completed and returned to this court not later than three days before the hearing hereinafter set, unless the time shall be enlarged by further order of the court.

3. The complainants complete the taking of their testimony under the provisions of this order by October 2, 1935, and the defendants shall complete the taking of their evidence by October 18, 1935.

4. The order heretofore granted permitting the use of affidavits is revoked.

5. The cost of taking the testimony, that is, the compensation and expenses of the Examiner and of any stenog-

rapher he may employ shall be paid out of the funds now impounded with the Clerk of this Court.

6. The hearing on the interlocutory injunction be and the same is hereby set at the United States District Court Room at Macon, Georgia, on Friday, October 25, 1935, at 9 o'clock A. M. Eastern Standard Time, said hearing to be had on the transcript of the evidence as made up by the Examiner.

This the 31st day of August, 1935.

R. W. Walker, U. S. Circuit Judge. Wm. H. Barrett, U. S. District Judge. Bascom S. Deaver, U. S. District Judge.

[File endorsement omitted.]

[fol. 86] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING RESTRAINING ORDER—Filed October 25, 1935

By consent of counsel representing the parties, it is Ordered,

That the temporary restraining order entered by the court herein be and the same hereby is continued in full force and effect until such time as the case can be heard by a three-judge court.

This October 25, 1935.

Bascom S. Deaver, U. S. District Judge.

Consented to by Wilcox, Connell & Wilcox, J. O. Gibson, Alston, Alston, Foster & Moise, Solicitors for Complainants. O. H. Dukes, Ed. D. Rivers, W. D. Dickerson, Lee W. Branch, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 87] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF J. N. TALLEY, SPECIAL EXAMINER

I, J. N. Talley, Special Examiner in the above stated cause under the appointment of this Court, do hereby Certify, as follows:

1. On September 12th, 1935, in the U. S. Court House at Raleigh, North Carolina, under the authority contained in the order of this Court dated August 31st, 1935, I began the hearing of testimony in the above stated cause, and the taking of evidence was completed at a hearing held in Room 208 Post Office Building, Macon, Georgia, on January 20th, 1936.

2. Hearings for the purpose of taking evidence were held at the following times and places designated by me, after due notice to counsel of record, to-wit:

Raleigh, N. C., September 12, 13, 14, 1935.
Wilson, N. C., September 19, 20, 21, 1935.
Macon, Ga., October 17, 18, 1935.
Wilson, N. C., October 29, 30, 31, Novr. 1, 1935.
Nashville, Ga., November 20, 21, 1935.
[fol. 88] Douglas, Ga., December 4, 5, 1935.
Atlanta, Ga., December 23, 24, 1935.
Macon, Ga., January 20, 1936.

3. Pursuant to said order of August 31, 1935 authorizing the employment of a stenographer, I employed W. E. Swinson to report and transcribe the testimony offered by the complainants and defendants, with direction to furnish two complete copies in addition to the original transcript in order that a copy might be available for each member of this Court. At the request of counsel, the stenographer was authorized to prepare four copies for counsel, two for each party, payment therefor, by consent, to be made from the funds in the registry of the Court. Copies have been furnished by the stenographer to counsel from time to time as the transcript was completed.

4. Before hearing his testimony each witness was duly sworn. The questions propounded to each witness and his answers, together with the objections made and noted, were taken down stenographically under my supervision and afterwards reduced to writing by the stenographer. The signature of each witness to his testimony or deposition was waived by stipulation of counsel.

5. The twelve volumes of typewriting numbered Vols. 1 to 12 inclusive, consisting of 1799 pages, herewith filed with the Clerk of this Court, each volume bearing the caption of the above stated cause, marked "Original", and

identified by my signature, contain a true and correct transcript of the testimony heard by me, and stenographically reported under my supervision as directed in the order of my appointment.

[fol. 89] The names of the attorneys in attendance before me at the several hearings and a record of the proceedings before me also appear in said transcript.

6. The Exhibits tendered by the complainants and defendants are filed herewith in a package bearing the caption of the cause, identified by my signature, and marked "Original Exhibits." These exhibits are identified in the transcript as Complainants' Exhibits Nos. 1 to 15 incl. and as Defendants' Exhibits Nos. 1 to 10 incl.

Copies of most of these exhibits are contained in Vol. 13, and two small volumes, filed herewith, and hereinafter referred to.

7. The volume of typewriting consisting of 130 pages filed herewith as Vol. No. 13, and identified by my signature contains copies of certain of the documentary evidence offered by the parties, listed by exhibit numbers on the first page of said volume. Said volume also contains an Index pages 2-8 incl., giving a list of witnesses examined, where examined, and pages of transcript where their testimony appears; and on pages 9-10 a list of the documentary evidence offered, with exhibit numbers.

8. The volume filed herewith, marked "Documentary Evidence. Complainants' Exhibits Nos. 4 through 8 inclusive," and identified by my signature, contains five exhibits offered by complainants, numbered as stated above.

9. The volume of typewriting, identified by my signature, marked "Plaintiffs Exhibits Nos. 10-15 inclusive in the Tobacco Warehouse Rate Case", and filed herewith, contains typed copies of the exhibits referred to as plaintiffs' exhibits Nos. 10 to 15 incl.

[fol. 90] I attach hereto eight Notices of hearings before me, copies of which were duly mailed to counsel of record.

In Testimony Whereof, I have hereunto subscribed my hand and affixed my seal, at Macon, Georgia, this the 23rd day of January 1936.

J. N. Talley, Special Examiner. (L. S.)

[fol. 91] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPOINTING MASTER—Filed February 1, 1936

This cause having been heretofore filed in the District Court of the United States for the Middle District of Georgia, Valdosta Division; and hearing having been had thereon for Temporary Restraining Order, and the same having been granted under the terms and conditions set out in the said order; and evidence having been taken therein, and the same having been assigned on final hearing before this Court, composed as required by statute, (all parties having agreed that this shall be considered and treated as the final hearing); and the same having been heard;

It is made to appear to the Court that the same involves exceptional conditions, as well as accounting, within the meaning of Equity Rule Number 59, and that it is expedient that the same be referred to a Master, on motion of the Court,

It is Therefore Ordered that this cause be, and it is hereby referred to J. N. Talley, of Macon, Georgia, as Special Master.

It is Further Ordered that said Special Master shall have all the powers, duties and privileges conferred upon Masters by the Federal Equity Rules in such cases made and pro-[fol. 92] vided, and as well all other powers, duties and privileges as are conferred or imposed by any acts, law or regulation of the United States or its authority.

The said Master shall use the evidence already taken in this cause, in so far as the same may have been legally taken and reported to this Court;

That he shall hear, consider and report upon all and each issue under or which may be made in this cause under the present pleadings, or such amendments as may be offered and allowed as to the question of the rates prescribed being confiscatory as to each of the plaintiffs separately. He may have hearings for the purpose of receiving evidence on the issue as to the rates allowed by the statute being confiscatory as to each of the plaintiffs separately, such evidence offered to be taken by the Master within fifteen days after a date prescribed by the Master. The defendants to have the right to offer rebutting evidence within fifteen days after a date

prescribed by the Master. The hearings for the purposes herein to be had at Macon, Georgia. The Master shall have the power to cause such evidence to be taken and returned into Court by a stenographer, or in such other manner as he may deem best. The taking of the new testimony provided for shall be at the expense of the plaintiffs. The Master shall rule upon the admissibility of all evidence to which objection has been made or may be made.

The Master is authorized, upon the approval of the Judge presiding in this cause in the Middle District of Georgia, to pay all stenographic fees, all traveling expenses of himself and stenographer, and other legitimate and proper charges incurred or to be incurred in this cause before him, to be [fol. 93] paid from the funds in the registry of this Court in this cause.

The Master is required to proceed in this matter with all reasonable diligence and to make report of his acts, doings and findings to this Court in the manner required by law.

At New Orleans, Louisiana, this 31st day of January, 1936.

R. W. Walker, Circuit Judge. Wm. H. Barrett, District Judge. Bascom S. Deaver, District Judge.

[File endorsement omitted.]

[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SUBSTITUTING JUDGE

It appearing that by order dated the 24th day of August, 1935, a three-judge court was organized for the purpose of hearing the above numbered and styled cause, said court composed of Hon. Richard W. Walker, Circuit Judge, Hon. William H. Barrett, District Judge, and the undersigned; and

It further appearing that, since said date, the Hon. Richard W. Walker, Circuit Judge, has departed this life;

It is Ordered, Adjudged and Decreed, that said order organizing said three-judge court be and it hereby is amended by substituting for the name of Hon. Richard W. Walker, Circuit Judge, the name of Hon. Edwin R. Holmes, Circuit Judge, so that the three-judge court, as

contemplated by par. 266, Judicial Code, is hereby reorganized and is composed of Hon. Edwin R. Holmes, Circuit Judge, Hon. William H. Barrett, District Judge, and the undersigned.

Let this order be entered on the minutes of the court.

Macon, Ga., this 19th day of June, 1936.

Bascom S. Deaver, U. S. District Judge.

[fol. 95] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF COMPLAINANTS FOR ORDER CONTINUING RESTRAINING ORDER—Filed July 17, 1936

Now come the complainants in the above numbered and styled cause and by their counsel move the court as follows:

1

Heretofore, to-wit, on July 27, 1935, this court entered a temporary restraining order on the original bill in this cause. Said order is hereby incorporated in this motion by reference, but it provided in part as follows:

"It being made further to appear to this court that in the carrying on of complainants' business as contemplated by the said purported Act of the General Assembly of Georgia, many sales will be made by each of the complainants each day during the period known as the 1935 tobacco marketing season in Georgia, and that if the reward of the complainants for the services rendered by them is fixed on the terms prescribed by the aforesaid purported Act of the [fol. 96] General Assembly of Georgia of 1935, the loss to the complainants in each instance will be small but in the aggregate very large, and that the sales will be made for many persons living in many localities, and the collection from them of the valid charges in the event complainants' bill should be sustained, would be impracticable if not impossible;

"The court is of the opinion that irreparable loss or damage may result to the complainants if said purported Act of the General Assembly of Georgia of 1935 is permitted to go into effect without the judicial review thereof guaranteed

to them by the Fourteenth Amendment to the Constitution of the United States;

"Therefore, the defendants and each of them named in said bill are temporarily restrained from enforcing the provisions of the said purported Act of the General Assembly of Georgia of 1935 until the hearing and determination of the application for interlocutory injunction, which said hearing shall be had upon notice as required by law.

• • • • • • •

"It is further ordered that each of the complainants shall deposit in the registry of the court each day during the 1935 tobacco marketing season in Georgia the difference between the amount of money actually collected by them for auction fees and for weighing and handling of leaf tobacco, on the one hand, and the amount of money which would have been collected by them under the charges fixed or undertaken to be fixed for the same services by the Act of the General [fol. 97] Assembly of Georgia of 1935, a copy of which is attached as Exhibit A to said bill.

"Said remittances shall be made to the Clerk of this Court by certified checks or cashier's checks or United States Post Office money-orders payable to 'George F. White, Clerk, for deposit in the registry'. Each of the complainants will so keep his books and other records, that they will show the persons for whose account the said remittances are made and the amount of the remittances for the benefit of each person. Said statements shall be made to the Clerk of this court immediately after the closing of the tobacco marketing season for 1935 in Georgia, or sooner as may be required by this court or if the Clerk of this court for the proper keeping of his records shall so request. These remittances shall be mailed to the Clerk on the day following the day of the sales covered by them; that is, remittances for sales made on Monday shall be made on Tuesday, etc.

"Said deposits shall be held by the Clerk of this court as security that each of the complainants shall pay such costs and damages as may be caused or suffered by any party who might suffer such loss or damage because of this restraining order. Said moneys shall not be paid out except on order of the court."

2

Movants further show that this court by order dated the — day of August, 1935, which order is hereby referred to

and incorporated in this motion by reference, appointed the Honorable J. N. Talley Special Examiner to take the evi-
[fol. 98] dence in this cause.

3

By further order of this court dated January 21, 1936, which order is hereby referred to and incorporated in this motion by reference, the Honorable J. N. Talley was appointed Special Master to make findings of law and fact and report the same to this court.

4

Movants show that for providential reasons the decision in this cause has been delayed from time to time and that it is impossible now to decide said cause before the 1936 tobacco selling season begins—said season having been announced to commence on August 4, 1936,—and that unless the terms of said temporary restraining order dated July 27, 1935, be amended, complainants will suffer irreparable loss and damage by reason of the statute of the General Assembly of Georgia enacted in 1935 fixing maximum charges for complainants' business.

Wherefore, complainants pray that this their motion be allowed and ordered filed and that an order be entered amending the restraining order of July 27, 1935, so as to protect complainants in their 1936 season operations.

Wilcox, Connell & Wilcox, J. O. Gibson, E. Kontz Bennett, Alston, Alston, Foster & Moise, Solicitors for Complainants.

[fol. 99] *Duly sworn to by W. H. Sibley. Jurat omitted in printing.*

[fol. 100] ORDER

The above and foregoing motion having been presented, it is ordered filed.

It is further ordered that the temporary restraining order granted by this court July 27, 1935, be amended so as to cover the operations of complainants' business during the 1936 tobacco selling season. Said order is amended by adding the following paragraphs thereto:

"It being made further to appear to this court that in the carrying on of complainants' business as contemplated by this said purported Act of the General Assembly of Georgia, many sales will be made by each of the complainants each day during the period known as the 1935 and 1936 tobacco marketing season in Georgia, and that if the reward of the complainants for the services rendered by them is fixed on the terms prescribed by the aforesaid purported Act of the General Assembly of Georgia of 1935, the loss to the complainants in each instance will be small but in the aggregate very large, and that the sales will be made for many persons living in may localities, and the collection from them of the valid charges in the event complainants' bill should be sustained, would be impracticable if not impossible;

"The court is of the opinion that irreparable loss or damage may result to the complainants if said purported Act of the General Assembly of Georgia of 1935 is permitted to go into effect without the judicial review thereof guaranteed to them by the Fourteenth Amendment to the Constitution of the United States:

[fol. 101] "Therefore, the defendants and each of them named in said bill are temporarily restrained from enforcing the provisions of the said purported Act of the General Assembly of Georgia of 1935 until the hearing and determination of the application for interlocutory injunction, which said hearing shall be had upon notice as required by law.

. . . . . .

"It is further ordered that each of the complainants shall deposit in the registry of the court each day during the 1935 and 1936 tobacco marketing season in Georgia the difference between the amount of money actually collected by them for auction fees and for weighing and handling of leaf tobacco, on the one hand, and the amount of money which would have been collected by them under the charges fixed or undertaken to be fixed for the same services by the Act of the General Assembly of Georgia of 1935, a copy of which is attached as Exhibit A to said bill.

"Said remittances shall be made to the Clerk of this court by certified checks or cashier's checks or United States Post Office money-orders, payable to 'George F. White, Clerk, for deposit in the registry'. Each of the complainants will so keep his books and other records, that they will

show the persons for whose account the said remittances are made and the amount of the remittances for the benefit of each person. Said statements shall be made to the Clerk of this court immediately after the closing of the tobacco marketing season for 1935 and 1936 in Georgia, or sooner [fol. 102] as may be required by this court or if the Clerk of this court for the proper keeping of his records shall so request. These remittances shall be mailed to the Clerk on the day following the day of the sales covered by them; that is, remittances for sales made on Monday shall be made on Tuesday, etc.

"Said deposits shall be held by the Clerk of this court as security that each of the complainants shall pay such costs and damages as may be caused or suffered by any party who might suffer such loss or damage because of this restraining order. Said moneys shall not be paid out except on order of this court."

In all other respects said restraining order of July 27, 1935, be and it is hereby continued in full force and effect until further order of this court.

This 15 day of July, 1936.

E. R. Holmes, United States Circuit Judge. Wm. H. Barrett, United States District Judge. Bascom S. Deaver, United States District Judge.

[File endorsement omitted.]

[fol. 103] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF L. M. RUSSELL AND FRANK WALLACE—Filed July 17, 1936

Come now Lawrence M. Russell and Frank Wallace and with leave of the court first had file this their intervention and show:

1

That your intervenor, Lawrence M. Russell, is a resident and citizen of New Tazewell, Claiborne County, Tennessee, and your intervenor, Frank Wallace, is a resident and citizen of Smithfield, Johnston County, North Carolina.

2

Your intervenors have purchased the tobacco warehouse heretofore known as the Pel[illegible]am Warehouse, located at Pelham, Mitchell County, Geor[illegible]ia, and will operate the same during the 1936 season as the Farmers Warehouse, at Pelham, Mitchell County, Georgia.

3

Intervenors show that the former owners or operators of said Pelham Warehouse were J. E. Jones and W. C. Spence, [fol. 104] a partnership known as Jones & Spence, who are complainants in the original bill in the above numbered and styled cause.

4

Intervenors adopt the allegations of the bill in this cause, as amended, as their own and desire to become parties plaintiff in this cause.

Wherefore, intervenors pray that this their intervention be allowed and that they be made parties plaintiff in the above numbered and styled cause.

E. Kontz Bennett, J. O. Gibson, Wilcox, Connell & Wilcox, Alston, Alston, Foster & Moise, Solicitors for Intervenors.

Duly sworn to by J. O. Gibson. Jurat omitted in printing.

[fol. 105] The above and foregoing intervention having been presented, it is ordered filed.

It is further ordered that Lawrence M. Russell and Frank Wallace be and they are hereby made parties plaintiff in this cause.

This 15 day of July, 1936.

E. R. Holmes, U. S. Circuit Judge. Wm. H. Barrett, U. S. District Judge. Bascom S. Deaver, U. S. District Judge.

[File endorsement omitted.]

[fol. 106] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF ALVERSON-PHILLIPS CO.—Filed July 17, 1936

Comes now Alverson-Phillips Warehouse Company and with leave of the court first had files this its intervention and shows:

1

That your intervenor is a corporation organized and existing under the laws of the State of Georgia and having its principal place of business at Moultrie, Colquitt County, Georgia.

2

Your intervenor has leased *to* the tobacco warehouse heretofore known as Central Warehouse No. 2, at Moultrie, Colquitt County, Georgia, and will operate the same during the 1936 season as Central Warehouse No. 2, at Moultrie, Colquitt County, Georgia.

3

Intervenor shows that the former owners or operators of said Central Warehouse No. 2 were C. K. Smith and F. R. Pidcock, Jr., a partnership, who are complainants in the original bill in the above numbered and styled cause.

[fol. 107]

4

Your intervenor has also leased the tobacco warehouse heretofore known as Blake's Tobacco Warehouse, at Moultrie, Colquitt County, Georgia, and will operate the same during the 1936 season as Blake's Tobacco Warehouse at Moultrie, Georgia.

5

Intervenor shows that the former owner or operator of said Blake's Tobacco Warehouse was Blake's Tobacco Warehouse, Inc., a corporation, who is complainant in the original bill in the above numbered and styled cause.

6

Intervenor adopts the allegations of the bill in this cause, as amended, as its own and desires to become a party plaintiff in this cause.

Wherefore, intervenor prays that this its intervention be allowed and that it be made a party plaintiff in the above numbered and styled cause.

Wilcox, Connell & Wilcox, J. O. Gibson, E. Kontz Bennett, Alston, Alston, Foster & Moise, Solicitors for Intervenor.

[fol. 108] *Duly sworn to by J. O. Gibson. Jurat omitted in printing.*

The above and foregoing intervention having been presented, it is ordered filed.

It is further ordered that Alverson-Phillips Warehouse Company be and it is hereby made a party plaintiff in this cause.

This 15 day of July, 1936.

E. R. Holmes, U. S. Circuit Judge. Wm. H. Barrett, U. S. District Judge. Bascom S. Deaver, U. S. District Judge.

[File endorsement omitted.]

[fol. 109] In United States District Court

[Title omitted]

Motion for Order Revoking Order of Reference

Come now the defendants by their counsel and move the court to annul and revoke the order entered herein on or about the 31st day of January, 1936, appointing the Honorable J. N. Talley of Macon, Georgia, as special master and referring said cause to him, and for grounds of motion respectfully show:

1

That the order of the court entered as aforesaid, as will be seen by reference thereto, among other things provides as follows:

"The said master shall use the evidence already taken in this cause is so far as the same may have been legally taken and reported to this court:

"That he shall hear, consider, and report upon all and each issue under or which may be made in this cause under the present pleadings, or such amendments as may be of-

fered and allowed as to the question of the rates prescribed being confiscatory as to each of the plaintiffs separately. He may have hearings for the purposes of receiving evi- [fol. 110] dence on the issue as to the rates allowed by the statute being confiscatory as to each of the plaintiffs separately, such evidence offered to be taken by the master with fifteen days after a date prescribed by the master."

2

Since the date of said order complainants have not, in any particular, amended or offered to amend their bill of complaint and have taken no additional evidence. On the contrary, in the hearings had before the master, counsel for complainants have admitted that, complainants cannot show confiscation as to all of complainants and in substance stated that they would not, therefore, undertake to show that the act under attack is confiscatory when applied to the business of any one of complainants.

3

Defendants aver that the position taken by counsel for complainants from a legal standpoint removes from the case a consideration of the effect of the statute from a revenue standpoint on the several businesses of complainants considered as separate units, and renders unnecessary an accounting which might otherwise be considered so difficult and involved as to justify the appointment of a special master under the applicable equity rules.

4

Since the date of said order, and after hearings were had and arguments were made before him, the Honorable J. N. Talley, Special Master, as aforesaid, has been stricken with a serious illness and, as defendants are advised, will most probably not be physically able to make his report to the [fol. 111] court within such time as might be deemed reasonable.

5

The tobacco selling season for 1936 is near at hand. The market will open about August 1st, 1936. It is exceedingly important both from the standpoint of the grower and the warehouse men, that this cause be brought to a final determination before that time.

6

The appointment of some other person to act as special master in lieu of the Honorable J. N. Talley, and a reference to such person as special master, would necessitate independent investigation by him, involving additional hearings and argument with additional expense to the interested parties and further delay in a final determination of the cause.

7

In view of the scope of the case as now defined and limited by the pleadings, the evidence, and admission of counsel, an investigation or report on the part of a special master could not be of material assistance to the court. At most, such report would be only advisory.

8

The appointment of the special master under the terms of the order entered by the court on or about the 31st day of January, 1936, was not at the instance or by procurement of the defendants.

9

The premises considered, defendants now show unto the court that said order of reference should be annulled and revoked and that the court itself should assume complete jurisdiction of the cause to the end that it may be brought speedily to a conclusion.

[fol. 112] Wherefore, defendants pray that they be accorded, a hearing on this motion after such notice as may be deemed appropriate and that the order of reference herein referred to be revoked, annulled and held for naught and that the court itself proceed with said cause as the principles of law, equity and justice may require.

M. J. Yeomans, Attorney General of the State of Georgia; O. H. Dukes, Assistant Attorney General of Georgia; L. W. Branch, W. D. Dickerson, E. D. Rivers, Attorneys for Defendants.

Duly sworn to by M. J. Yeomans. Jurat omitted in printing.

[fol. 113] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER REVOKING ORDER OF REFERENCE—Filed July 17, 1936

Motion of defendants to revoke the order of reference in this cause, coming on for hearing, and it appearing that the Honorable J. N. Talley is physically unable to complete his report as Special Master, it is

Considered, Ordered and Adjudged, that:

1. The order of reference of this cause to the Honorable J. N. Talley, dated January 31, 1936, be, and it is hereby, revoked.

2. The findings of fact of the master, as identified by Judge Deaver be filed with the Clerk of this Court by August 1, 1936.

3. Said papers as filed shall not be considered as a Master's report but only as information and as an aid to the court and the attorneys.

4. The cause is set down for full and final hearing this date by oral argument before the Court as now constituted.

5. Leave to file briefs is granted. Those for complainants to be served and filed not later than August 15, 1936. [fol. 114] Those for defendants to be served and filed not later than September 1, 1936. Reply briefs by both parties are to be served and filed not later than September 10, 1936. In their briefs, counsel for each side, shall indicate their agreement or disagreement with any finding of fact in the report of Honorable J. N. Talley and in support of a disagreement shall cite the page of the record sustaining their position. If any additional findings of fact are desired by either party to be made by the court, request shall be made for such findings with appropriate citations to the parts of the record sustaining them.

6. Compensation of the Special Master will be fixed by the Court in a separate order.

7. The Honorable Bascom S. Deaver is hereby authorized and directed to allow over his own signature amendments and interventions and pass such administrative orders as

may be necessary without submitting the same to the other Judges constituting this court.

In Open Court, this 15th day of July, 1936.

Edwin R. Holmes, U. S. Circuit Judge, by Wm. H. Barrett, Wm. H. Barrett, Bascom S. Deaver, Judges United States District Court.

We consent to the above and foregoing order:

M. J. Yeomans, Atty. Gen.; O. H. Dukes, Ass. Atty. Gen.; M. D. Dickerson, E. D. Rivers, Lee W. Branch, Attorneys for the Defendants. Wilcox, Connell & Wilcox, J. O. Gibson, E. Kontz Bennett, Alston, Alston, Foster & Moise, Attorneys for Complainants.

[File endorsement omitted.]

[fol. 115] In United States District Court for the Middle District of Georgia, Valdosta Division

In Equity. No. 88

C. R. Townsend and Park Bernard, a Partnership Known as Townsend & Bernard, Doing Business as Cook County Warehouse, et al.

vs.

M. J. Yeomans, Attorney-General for the State of Georgia, et al.

Opinion, Findings of Fact and Conclusions of Law—Filed October 19, 1936

By act approved March 28, 1935, the General Assembly of the State of Georgia enacted as follows:

"• • • maximum charges and expenses of handling and selling leaf tobacco upon the floor of the tobacco warehouses of this State shall not exceed the following schedule to wit:

for auction fees fifteen cents (15) on all piles of one hundred pounds (100) or less and twenty-five cents (25) on all piles over one hundred pounds (100). For weighing and handling ten cents (10) per pile on all piles of one hundred (100) pounds and ten cents (10) for each additional one hundred pounds (100). • • "

Some forty-five tobacco warehousemen brought a complaint against a number of law enforcing officers of the State of Georgia charging that the said act was "unjust, unreasonable, arbitrary and confiscatory" and that:

"The said schedule of maximum charges prescribed by said purported act, if put into effect, will deprive each of your orators of his, their or its property without due process of law and will deprive him, them or it of the equal protection of the law, contrary to the provisions of the [fol. 116] Fourteenth Amendment to the Constitution of the United States, upon which your orators rely."

Defendants denied that the said act was void as against the complainants for any or all of the reasons alleged. They further contended that the relief prayed for could not be granted because there were no allegations as to the invalidity of the said act, especially as to its confiscatory nature as against each individual complainant and the allegation of the complaint as to such element being confined to aggregate of the complainants as distinguished from each individual complainant.

A Court was organized under Judicial Code Sec. 266, U. S. C. A., Title 28, p. 380.

By order of January 31, 1936, after a hearing had been had for sometime by such court, J. N. Talley, Esquire, of Macon, Georgia, was appointed as special master with power, among others, as follows:

"That he shall hear, consider, and report upon all and each issue under or which may be made in this cause under the present pleadings, or such amendments as may be offered and allowed as to the question of the rates prescribed being confiscatory as to each of the plaintiffs separately".

There have never been proffered by complainants any amendment "as to the question of the rates prescribed being confiscatory as to each of the plaintiffs separately."

After extensive hearings by said master he was stricken with a serious illness and was unable to complete his labors. Upon such conditions being brought to the attention of such court an order was passed on July 15, 1936, embracing, among other provisions, the following:

[fol. 117] "The order of reference of this to the Honorable J. N. Talley, dated January 31, 1936, be, and is it hereby, revoked.

The findings of fact of the master as identified by Judge Deaver be filed with the Clerk of this Court by August 1, 1936.

Said papers as filed shall not be considered as a Master's report but only as information and as an aid to the court and the attorneys.

* * * * * * *

* * * In their briefs counsel for each side shall indicate their agreement or disagreement with any finding of fact in the report of Honorable J. N. Talley and in support of a disagreement shall cite the pages of the record sustaining their position. If any additional findings of fact are desired by either party to be made by the court, request shall be made for such findings with appropriate citations to the parts of the record sustaining them".

Equity Rule 61½, reading as follows:

"In all references to a master, either compulsorily by the court in cases where it has the power to make a compulsory reference, or by consent of parties where consent is necessary, whether the reference be of all issues of law and fact, or only particular issues of law or fact or both, the report of the master shall be treated as presumptively correct, but shall be subject to review by the court, and the court may adopt the same, or may modify or reject the same in whole or in part when the court in the exercise of its judgment is fully satisfied that error has been committed"

* * *

does not apply.

[fol. 118] FINDINGS OF FACT

By virtue of the aforesaid order as well as by reason of the great ability of Mr. Talley use is made of his report, so far as it had progressed, in the following manner. His findings of fact are adopted and here stated just as he has written them except as modified by notes to the findings, as follows:

1. This suit is brought by the complainants named in the bill. Three of the complainants are corporations, three are individuals doing business under trade names, and sixty-seven are members of thirty partnerships, as set out in the bill.

2. The defendants described as officers are as named in the bill and hold the official positions therein stated, to-wit: Attorney General for the State of Georgia, the Solicitors General of eight judicial circuits, the sheriffs of fifteen counties, and Solicitors of the City Courts of eleven counties, of Georgia, and five of the defendants who are named as sheriffs of their respective counties are also parties defendant as members of the class of growers of leaf tobacco and as representatives of the class of sellers of such tobacco in the warehouses described in the original bill.

3. In this proceeding the amount and value involved exceeds the sum of three thousand dollars, exclusive of interest and costs. Each of the complainants has more than three thousand dollars involved in the subject matter of this litigation.

4. Complainants are engaged in the business of handling and selling loose-leaf tobacco in the State of Georgia, and a majority of the complainants have been so engaged for several years. The number of warehouses operated and the number of warehousemen engaged in their operation both vary from year to year.

5. For many years prior to 1916 the farmers in southern Georgia largely relied upon cotton as their chief money crop. [fol. 119] The coming of the boll weevil, however, caused them to seek in tobacco a new source of revenue. Experienced men, called "demonstrators", from the Carolinas and other tobacco growing states were engaged by the Georgia farmers to assist them in the selection of suitable soil and instruct them in the science of growing and curing tobacco. By 1925 the industry was becoming well established and two years later the employment of demonstrators had been almost entirely abandoned. Note: The last sentence in this paragraph is modified by inserting between the words "been" and "abandoned" the words "almost entirely".

The type of tobacco grown in Georgia is the "bright leaf" and is almost exclusively used in the manufacture of cigarettes. This variety is grown extensively in North Carolina, to a much less extent in South Carolina and Georgia, and to some extent in Virginia, Kentucky and Tennessee.

From small beginnings in 1917 the cultivation of tobacco has become an important industry. The acreage planted in tobacco by the individual farmer is comparatively small, but on account of the necessity of finding adaptable soil, the

aggregate acreage is now not only very considerable but widely distributed over a large area in the southern portion of the state. In 1930 the sales of tobacco through the warehouses in Georgia reached a total of 106,483,019 pounds, and the sales during the tobacco season of 1935 realized the sum of $13,582,912.71.

6. The necessity for markets and the early maturity of tobacco in Georgia presented an opportunity which was early recognized by skilled and experienced warehousemen operating in the tobacco belts of North Carolina and other states having selling seasons which begin some time after the termination of the selling season in Georgia.

[fol. 120] With a few exceptions there are and have been resident in Georgia no competent warehousemen, or skilled and experienced auctioneers, calculators, clip-men, weighers, pay-off men, and similar experienced help to assist warehousemen in handling and selling tobacco at warehouse auction sales.

In order to sell their tobacco in warehouses in Georgia, such warehouses must be operated with possibly few exceptions by warehousemen from other tobacco states and the warehousemen must employ and bring to Georgia skilled assistants from other tobacco growing states. Note: This paragraph is modified to the extent of inserting between the words "operated" and "by" in the second line thereof the words "with possibly a few exceptions".

Of the forty-five warehouses operated in 1935, thirty-nine were operated by warehousemen who also operated or were connected in some capacity with the operation of warehouses in North Carolina, Kentucky, Virginia or Tennessee. The South Carolina selling season opens about ten days later than the Georgia season. The two seasons, therefore, conflict to such extent as to prevent warehousemen and skilled help coming to Georgia from that state.

7. The principal purchasers of the bright leaf tobacco grown in Georgia and in other states are limited to a few large manufacturers of cigarettes. "The Companies" they are called by the warehousemen in their testimony. The companies purchase tobacco only at warehouse auction sales, and only at warehouses to which they send or furnish "buyers". Each "buyer" is the representative of one of the competing purchasers, a "set of buyers" usually from eight to twelve in number, is made up of representatives from each of the purchasing cigarette manufacturing com-

panies. The presence of a "set of buyers" is essential at such auction sale. A town in which is located one or more warehouses is known as a "market". If one set of buyers [fol. 121] is allotted it is known as a "one-set market", and if two are furnished it becomes a "two-set" market. The manufacturers by sending a set of buyers to a new warehouse may recognize a new market and by refusing to send one to an old market may cause its abandonment, and by sending either one or two sets of buyers to a given market may determine the rapidity with which the accumulated tobacco may be disposed of at auction.

Another class of purchasers is known as "speculators". On rare occasions, a speculator purchases tobacco from a grower and has it transported to a warehouse for sale. At auction sales, speculators to a comparatively limited extent, in comparison with buyers, purchase tobacco for a later sale.

8. The tobacco belt comprises approximately twenty counties in the southern portion of the state, and in 1935 contained fifteen towns known as "markets", in which were operated forty-five warehouses operated that year by complainants as warehousemen. Seven of the markets were furnished one set of buyers and eight were furnished two sets. The two-set markets had a total of thirty and the one-set markets a total of fifteen warehouses in operation.

The number of warehouses operated varies from year to year. In 1931 fifty-one warehouses were operated in twenty-one markets, in 1933 forty-two were operated, and in 1934 thirty-nine. Since 1932 the number of markets has remained at fifteen.

The quantity of tobacco sold in the warehouses located in the tobacco belt and as well the price received fluctuates from year to year as will appear from the following statement of aggregate sales and average prices for the years 1930 to 1935, inclusive:

[fol. 122]

Year	Gross Sales	Value	Average Price Per Pound
1930	106,483,019 lbs.	$10,501,228.63	9.86 cents
1931	60,881,696 lbs.	3,901,841.66	6.41 cents
1932	12,171,179 lbs.	1,267,211.07	10.40 cents
1933	59,853,963 lbs.	6,764,125.31	11.30 cents
1934	33,623,475 lbs.	6,299,751.96	16.73 cents
1935	71,826,352 lbs.	13,582,912.71	18.91 cents

9. (This is finding 10 of the master, he having inadvertently omitted a finding 9.)

In the normal and customary course of marketing in Georgia tobacco can only be sold in warehouses located in the tobacco belt of that state.

10. (This is finding 11 of the master.) Beginning with the tobacco selling season of 1927, all warehousemen operating warehouses in Georgia have uniformly maintained, and exacted from sellers, a hard and fast schedule of charges for their services in handling and selling leaf tobacco. There may have been some insignificant exceptions but they were so insignificant as to be immaterial. The schedule of charges so exacted and which was in effect at the time the Georgia tobacco warehouse Act was passed in March 1928 (should be 1935), was based upon three elements, the sale value of tobacco, the number of piles handled, and the weight of the quantity sold, and was as follows:

Commissions: Two and one-half per cent (2½%).
Auction fees: Twenty-five cents per pile up to and including 200 pounds; fifty cents per pile above 200 pounds;
Weighing and handling: Twenty-five cents per pile up to 100 pounds; twenty-five cents for each additional 100 pounds.

[fol. 123] Note: The above section modified by adding immediately after the first sentence these words *in brackets*: "There may having been some insignificant exceptions but they were so insignificant as to be immaterial".

Prior to 1927 the tobacco warehousemen in Georgia for many years, if not from the beginning of the industry, had maintained and exacted from sellers of tobacco a uniform schedule of charges substantially, if not identically, the same as the schedule fixed by the Act of 1935 the validity of which is now being challenged by complainants.

11. (This is finding 13 of the master, he having apparently by inadvertence omitted a finding 12.) The Georgia tobacco warehouse Act, approved March 28, 1935, a copy of which may be found herein at page —, prescribed a schedule of maximum commissions and fees which may be

lawfully charged by proprietors or persons in charge of warehouses for their services in handling and selling leaf tobacco in warehouses in the state of Georgia. The schedule so prescribed is as follows:

Commissions: Two and one-half per cent (2½%) on gross sales;

Auction fees: Fifteen cents on all piles of 100 pounds or less; twenty-five cents on all piles over 100 pounds;

Weighing and handling: Ten cents per pile of 100 pounds or less, and ten cents for each additional 100 pounds.

Under the statutory maximum schedule of charges the items of commissions, two and one-half per cent, remains the same as in the "former charges", or those being made at the time the Act was passed. The reduction of former charges made by the Act is confined to the two items, auction fees and fees for weighing and handling. The percentage reduction is difficult of exact determination be- [fol. 124] cause it depends upon the number of and weight of all piles of tobacco handled.

The said Act of 1935, if enforced, will reduce the amounts received by warehousemen for their services under the former schedule of charges by approximately — per cent.

The difference in dollars between the amount the complainants would have received for their services in 1935 based upon the former or higher schedule and the amount they would be entitled to receive under the statutory or lower schedule is $115,920.90, the amount deposited in the registry.

12. (This is finding 14 of the master.) There is strenuous and expensive competition between warehousemen in securing tobacco from growers to be handled and sold in their respective warehouses, but in the sale of tobacco there is no competition except such as exists between the respective buyers and speculators at the auction sales, and the bids of the warehousemen themselves. For their services, the warehousemen throughout the tobacco belt uniformly deduct from the purchase price stated amounts according to their established schedule.

NOTE.—This finding is modified slightly only by adding immediately at the end of the first sentence and before the period the words "and the bids of the warehouseman himself."

13. (Master's finding 15.) There is substituted for this finding 15, the following: "By reason of their control of the warehouses in which tobacco is sold, in the normal and customary course of marketing in Georgia the warehousemen have, unless regulated by law, an unduly coercive control over prices charged the growers for services."

14. (The master's second number 15 finding.) After tobacco has been cured and is ready for the market, the grower grades it, as best he can, and the resulting "piles" of loose leaves are placed in sheets, which are then tied [fol. 125] and the tobaccco is so transported to the selected warehouse for sale. There the warehouseman and his employees take charge. The tobacco is unloaded, the piles dumped into flat baskets, the sheets removed, the tobacco weighed, and there is placed on the basket a ticket giving the name of the owner and the weight of the pile. The baskets of tobacco are then placed in long parallel rows along the floor of the warehouse.

Auction sales in a "market" are held daily during five days of the week, and in a particular warehouse as often as sufficient tobacco accumulates and a set of buyers go to another, but sales usually begin at nine o'clock in the morning. For the reason above stated the number of sale days at a particular warehouse during the selling season is a variable quantity.

It is essential that there be present, the warehousemen, an auctioneer, and other skilled help who are employed by the warehousemen, and one set of buyers.

As the informal procession moves along the row each basket of tobacco is offered for sale by the auctioneer and such is the rapidity of movements that sales are made at an average rate of six baskets per minute.

The warehouseman starts the auction of each basket by making the opening bid. If this is not taken or raised by another, the warehouseman becomes generally the purchaser of the tobacco for his own account. If not sold in this summary fashion, the bidding for the basket continues until its sale is announced by the auctioneer, and a card is

dropped on the pile giving the name of the purchaser and the amount of his bid. The grower or other owner, however, has the right to turn down the sale and this may be accom- [fol. 126] plished by turning over the card. The grower in such case may hold his tobacco for a later sale or remove it from the warehouse. Immediately after a sale of a lot has been completed the tobacco sold is delivered to the purchaser who removes it from the floor. It is re-weighed by the purchaser, who, usually several days later, makes payment to the warehouseman, and this is based upon the re-weight of the tobacco, less a small amount for shrinkage. As soon as the sale of a lot is completed the warehouseman pays to the seller the purchase price of the tobacco, less warehouse charges. This payment is made upon the basis of the weight of the tobacco after it reaches the warehouse and before being placed on the floor for sale. While an auction sale is in progress the warehouseman from time to time makes bids for baskets being offered. The purpose of this bidding, as well as of making the opening bid, is to boost the bidding of the buyers and speculators, in an effort to secure for the seller the best price obtainable. The tobacco so purchased as above by the warehouseman is afterwards also sold at auction, and may result in a profit or a loss to the warehouseman, and is shown in his "leaf account". References to "gross sales" in this report are to gross "first hand" sales and re-sales are not included. During the progress of auction sales a considerable quantity of tobacco leaves are left on the floor. This is known as "sweepings" or "scoop", is sold by the warehouseman and the amount received for it carried into his "leaf account" where it may reduce the loss shown by that account. The balance shown by that account appears in the warehouseman's statement of income as an added item.

NOTE.—To avoid any possible inaccuracy of statement there is inserted between the words "warehouseman" and "becomes" in the third line of this paragraph the word "generally".

[fol. 127] 15. (Master's finding 16). The tobaccco selling season in Georgia is from three to five weeks in length. The 1935 season began on the first day of August and closed on the twenty-first day of the same month.

The tobacco is ready for the market the latter part of July or early in August dependent upon the growing con-

ditions. The exact date for opening the selling season is fixed by the manufacturers of tobacco, who are the principal buyers, and the warehousemen who operate warehouses in the tobacco belt. The exact closing date is fixed by the warehousemen and the buyers at the several markets.

The short tobacco season causes growers to rush tobacco to the market and does not afford to them a fair opportunity to properly grade, store, bundle, and orderly market their tobacco.

The short season is in large part occasioned by the efforts of the manufacturers to transfer their buyers to the North Carolina belts, in some of which the selling seasons begin early in September, and the efforts of the warehousemen to dispose of the tobacco in Georgia in order that they and their auctioneers and other skilled employees may proceed to the later and larger seasons of North Carolina and other states there to continue their warehouse businesses.

(The foregoing are all of the master's findings. The following additional findings are made.)

16. Statutes fixing the same scale of charges as proposed in the Georgia act of 1935 are the same in North Carolina and South Carolina. The scale of charges heretofore in effect in Georgia is not so high as the non statutory Tennessee or Kentucky charges. No attack has been made upon the constitutionality of the Carolina statutes.

17. The propriety of charging materially or any more for handling tobacco in Georgia than in the Carolinas is [fol. 128] not established.

18. It is not established that the Act attacked was passed without any knowledge on the part of the legislature as to actual conditions under which the business was, and is, being carried on in Georgia.

19. It is not proven what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the act attacked. It is not denied that some warehousemen earned a satisfactory profit. It is not proven that in instances where a loss occurred such loss was not due to excessive competition, ill advised loans, unnecessary expenses in buying influence or

hauling customers' tobacco, or other causes than the reduction in charges. The testimony as to the effects of the act attacked is as to the group of warehousemen who are complainants, rather than to the effect on each one, and even then it is not proven that all the losses are traceable to the reduction in charges rather than to other causes.

20. Among the warehousemen there has been organized what is known as the Tobacco Warehousemen's Association, of which all complainants in this case are members. There *is* no warehousemen in the Georgia market not joined in the instant suit. The prosecution of the suit is an organized fight through the Warehousemen's Association. The growers are not eligible for membership in this Association. The Association and the buyers determine the date the market in Georgia opens and substantially determine the date on which it closes. The Association undertakes to deal with such practices as affect the interest of the members thereof and adopts regulatory rules to be observed by such members. A new member is admitted when he becomes identified with the tobacco warehouse business in Georgia and promises to be governed in his charges by the schedule of fees then in effect throughout the State of Georgia as [fol. 129] fixed by the Association.

On page 94 of the minutes of said Association of a meeting of May 8, 1934, the following entry appears:

"The Secretary was requested to read letter of President Brown to Mr. J. C. Lanier requesting that no reduction be made in commissions or charges by the Georgia warehousemen for the year 1934 season. After discussion of the matter it was decided that no changes should be made in charges, but that if any were made it would be higher instead of lower."

On page 91 of the minutes of the meeting of the Association of June 8, 1934, appears an entry to the effect that the object of the meeting was explained by W. E. Fenner as being

"For the consideration of the bill passed by the Georgia legislature fixing warehouse charges, and a committee was appointed to employ attorneys."

On page 90 of the minutes of said Association of a called meeting of June 22, 1935, appears an entry as follows:

"Motion was made and carried that an additional assessment of $75.00 per warehouse be made, this to be for employment of attorneys (in this case)."

On page 89 of the minutes of said Association of a meeting of July 11, 1935, appears an entry as follows:

"On motion made and carried small warehouses assessed $85.00 and others $125.00 in making up fund for legal expenses. (this case)."

On page 88 of the minutes of said Association of a meeting of July 30, 1935, appears the following:

"Upon motion duly made and carried the President was authorized to appoint at least a half dozen members of the Association to attend the Macon hearing (the interlocutory hearing in this case) and be prepared to give any testimony that might be desired by the court."

[fol. 130] The complainants through the Warehousemen's Association and their common agreement as to the fees to be charged by them for services rendered maintain and enjoy a virtual monopoly in the field covered by their operations.

21. The business of tobacco warehousemen as conducted in Georgia in the year 1935 and for some years prior thereto was such as to cause it to be "affected with a public interest" and "clothed with a public use."

22. The scale of charges prescribed by the said Georgia Act of 1935 is not unreasonable, arbitrary and capricious and is reasonably adapted to accomplish the desired results.

23. The fixing of a scale of prices for services rendered by the warehouseman does not burden or interfere with interstate commerce.

Conclusions of Law

1. The character of presumption in favor of legislative action and the method and conditions of attack to overcome such presumption are fully stated by the Supreme Court

of the United States in the case of Borden's Company v. Baldwin, 293 U. S. 194. It would be superfluous to repeat here. Under our findings of fact the attack has not been sustained by appeal to judicial notice or by testimony.

2. Unless "confiscation is clearly established" attack on that ground must fail. Los Angeles Gas Co. v. R. R. Com., 287 U. S. 287. There has been no such proof in this case.

3. The Supreme Court has in the recent case of Nebbia v. New York, 291 U. S. 502, presented such an able and exhaustive discussion on both sides of the question as to [fol. 131] when an occupation is so "affected with a public interest" or "clothed with a public use" as to be subject to legislative control to the extent of price fixing that any attempt at clarification by us would be presumption. Under that decision the statute under attack is clearly within the scope of legislative power.

4. As we understand the contention of complainants it is, that because the acts of the warehousemen constitute one step in getting the tobacco to the manufacturers and such manufacturers all, or practically all, reside out of this state and it was known at the time the services were rendered by the warehousemen that the ultimate destination of the tobacco would be out of this state, that such services constituted a part of interstate commerce. We cannot agree with this contention. If sound, logically it would lead us to the conclusion that the very planting and harvesting of tobacco were parts of interstate commerce, for the reason that each of such acts was with the knowledge that all or practically all of the tobacco would ultimately move out of this state. See Chassaniol v. Greenwood, 291 U. S., 584, 587, tax on local cotton buyers.

5. Proof that the group, as an entity, was losing money is not sufficient to justify the invalidation of the Act. In order to justify the relief prayed for by the group as a whole it would be necessary to segregate the individual members thereof and ascertain whether the act was unconstitutional as to each one and that relief should be granted as to each one. Such proof has not been proffered in this case. See Heald v. District of Columbia, 259 U. S. 114, 123, and the cases cited in the footnote.

The result is that all the prayers of the bill are denied and [fol. 132] an appropriate decree may be presented in according with the conclusions reached.

This — day of October, 1936.

E. R. Holmes, United States Circuit Judge. Wm. H. Barrett, United States District Judge.

[File endorsement omitted.]

[fol. 133] IN UNITED STATES DISTRICT COURT

[Title omitted]

DISSENTING OPINION—Filed October 19, 1936

Two members of the three-judge court make, among others, the following findings of fact:

"The necessity for markets and the early maturity of tobacco in Georgia presented an opportunity which was early recognized by skilled and experienced warehousemen operating in the tobacco belts of North Carolina and other states having selling seasons which begin some time after the termination of the selling season in Georgia.

"With few exceptions there are and have been resident in Georgia no competent warehousemen, or skilled and experienced auctioneers, calculators, clip-men, weighers, pay-off men, and similar experienced help to assist warehousemen in handling and selling tobacco at warehouse auction sales.

"In order to sell their tobacco in warehouses located in Georgia, such warehouses must be operated by warehousemen from other tobacco states and the warehousemen must employ and bring to Georgia skilled assistants from other tobacco growing states. * * * Note: This paragraph is modified to the extent of inserting between the words 'operated' and 'by' in the second line thereof the words 'with possibly a few exceptions'." (First part of finding of fact No. "6".)

[fol. 134] "By reason of their control of the warehouses in which tobacco is sold, in the normal and customary course of marketing in Georgia, the warehousemen have, unless regulated by law, an unduly coercive control over prices

charged the growers for services." (Finding of Fact No. "13".)

"It is not proven what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the act attacked. It is not denied that some warehousemen earned a satisfactory profit. It is not proven that in instances where a loss occurred such loss was not due to excessive competition, ill advised loans, unnecessary expenses in buying influence or hauling customers' tobacco, or other causes than the reduction in charges. The testimony as to the effects of the act attacked is as to the group of warehousemen who are complainants, rather than to the effect on each one, and even then it is not proven that all of the losses are traceable to the reduction in charges rather than to other causes." (Finding of Fact No. "19".)

"The complainants through the Warehousemen's Association and their common agreement as to the fees to be charged by them for services rendered maintain and enjoy a virtual monopoly in the field covered by their operations." (Last paragraph Finding of Fact No. "20".)

"The business of tobacco warehousemen as conducted in Georgia in the year 1935 and for some years prior thereto was such as to cause it to be 'affected with a public interest' and 'clothed with a public use'." (Finding of Fact No. "21".)

"The scale of charges prescribed by the said Georgia Act of 1935 is not unreasonable, arbitrary and capricious and is reasonably adapted to accomplish the desired results." (Finding of Fact No. "22".)

[fol. 135] And the following conclusions of law:

"The Supreme Court has in the recent case of Nebbia v. New York, 291 U. S. 502, presented such an able and exhaustive discussion on both sides of the question as to when an occupation is so 'affected with a public interest' or 'clothed with a public use' as to be subject to legislative control to the extent of price fixing that any attempt at clarification by us would be presumption. Under that decision, the statute under attack is clearly within the scope of legislative power." (Conclusion of Law No. "3".)

"As we understand the contention of complainants, it is, that because the acts of the warehousemen constitute one step in getting the tobacco to the manufacturers and such

manufacturers all, or practically all, reside out of this state and it was known at the time the services were rendered by the warehousemen that the ultimate destination of the tobacco would be out of this state, that such services constituted a part of interstate commerce. We cannot agree with this contention. If sound, logically it would lead us to the conclusion that the very planting and harvesting of tobacco were parts of interstate commerce, for the reason that each of such acts was with the knowledge that all or practically all of the tobacco would ultimately move out of this state. See Chassaniol v. Greenwood, 291 U. S. 584, 587." (Conclusion of Law No. "4".)

"Proof that the group, as an entity, was losing money is not sufficient to justify the invalidation of the Act. In order to justify the relief prayed for by the group as a whole, it would be necessary to segregate the individual members thereof and ascertain whether the act was unconstitutional as to each one and that relief should be granted as to each one. Such proof has not been proffered in this case. See Heald v. District of Columbia, 259 U. S. 114, 123, and cases [fol. 136] cited in the footnote." (Conclusion of Law No. "5".)

To these findings and conclusions, I find myself unable to agree.

Findings of fact numbers "6", "13" and "20" deal in the main with the question of monopoly.

Number "6" finds that the Georgia warehouses must be operated, with few exceptions, by warehousemen from other tobacco states, and that the warehousemen must employ and bring to Georgia skilled assistants from other tobacco states. It cannot, it seems to me, be said, as a basis for permanent legislation, that no one except those already engaged in the warehouse business in other states, has the ability to operate a warehouse. The evidence shows that some local men do either own or rent warehouses and employ experienced warehousemen to operate them. The fact that skilled assistants must be employed does not exclude any competent business man from engaging in the warehouse business.

Numbers "13" and "20" find that the warehousemen have an unduly coercive control over prices charged for their services and enjoy a virtual monopoly. For that to

be true, it would be necessary for these nonresident warehousemen to possess all the business ability in that line and to have a "corner" on skilled employees, or to have such control over the tobacco companies as to prevent them from sending buyers to any warehouse not operated by the nonresident warehousemen. The evidence does not show any conspiracy between the companies and the warehousemen. Nor does it show any control by the warehousemen over skilled help necessary to be employed in warehouses. Nor does it show that these nonresident warehousemen are the only persons who have sufficient ability to rent or own a warehouse and have it properly operated. The warehouse business is a wide open field and anyone with even modest [fol. 137] capital may enter it. It is not conceivable to me that growers in a comparatively small territory like southern Georgia, with a crop of the value of many millions of dollars could successfully contend that they are controlled and coerced by a few warehousemen, when those growers who now carry their crops to a given market could, by the outlay of an almost insignificant portion of the value of their crops, furnish, in that same town or "market", facilities for disposing of their tobacco. It is not shown that buyers would not be sent there. And, if the warehousemen now operating are charging excessive prices for their services, in view of the expenses incident to their operation, then the growers could not only dispose of their crops through other warehousemen employed by them, but could also make money on the warehouses themselves. Instead of the warehousemen being in position to coerce the growers, the growers are in position to coerce the warehousemen to the point of extinction. There is no monopoly.

Number "21" finds that the warehouse business is "affected with a public interest." There is, I think, no monopoly, and there is, in my opinion, nothing in the evidence, in the absence of monopoly, to impress the business with a public interest.

Number "22" finds that the Act in question is not arbitrary and is reasonably adapted to accomplish the desired results. The Act is permanent and intended to operate alike each year without reference to the size of the tobacco crop in any year. The expense of operating a warehouse is not governed by and has no relation to the size of the crop. The income of the warehousemen from auction fees

and weighing and handling fees is dependent upon the number and weight of piles of tobacco handled (Finding of Fact No. "11"); that is to say, upon the size of the crop. There is no provision for adjusting fees to accord with the yearly changing volume of business. (See Finding of Fact No. [fol. 138] "8".) The act fixes no standard basis upon which a reasonable return on the money invested and the services performed in the business may be realized. A return reasonable for one year would be unreasonable for another year—either too large or too small. There is no common factor which influences both investment and return. A return which depends upon the uncertain size of the crop has no relation to or connection with reasonableness or unreasonableness. An act which does not relate investment to return but lets the former take care of itself and makes the latter depend upon an uncertain and constantly changing factor may be said to approach the arbitrary, even without strict proof of confiscation at any given time. However, whether that fact renders the act arbitrary or not, under the Nebbia case, 291 U. S. 502, 536, if regulation is not necessary for the public good, attempted regulation is an arbitrary interference with individual liberty.

Is the act reasonably adapted to accomplish the desired result? Finding of fact number "9" is that "In the normal and customary course of marketing in Georgia, tobacco can only be sold in warehouses located in the tobacco belt of that state." A part of finding number "6" is that, "In order to sell their tobacco in warehouses located in Georgia, such warehouses must be operated, with possibly a few exceptions, by warehousemen from other tobacco states. • • •"

The purpose of the act, I take it, is to protect the growers in their income from crops. Now, if by reason of weather conditions or insects or blight, the crop in any given year should be so small that the warehousemen would decide not to come to Georgia that year, then, if the findings above stated are correct, the growers could not dispose of their crops at all, and their income for that year would be totally destroyed. Such a result would not be the desired result. Of course, the growers do not fear such a result, [fol. 139] and the reason they do not is because they know that if all the associated nonresident warehousemen were to quit, other people or the growers themselves would build or

rent warehouses and that buyers and auctioneers would be available to dispose of the crop. Growing tobacco for sale is a business, and selling tobacco by warehousemen is a business, and each, if left free, is able to take care of itself without any injury to the public or any substantial group of the public. The act is an effort, it seems to me, to limit and circumscribe one business for the benefit of another without any public necessity for doing so; and is, therefore, an arbitrary interference with individual liberty. It follows, I think, that, if the findings of fact are not correct, the act is arbitrary and, if the findings are correct, the act is not reasonably adapted to accomplish the desired end.

In the case of Lemke vs. Farmers Grain Co., 258 U. S. 50, the Supreme Court held that the buying of grain in North Dakota for shipment to other states for sale was interstate commerce. In that case was cited the Dahnke-Walker Milling Co. case, in which the facts disclose that a Tennessee company went into Kentucky and brought wheat for shipment to the company's mill in Tennessee. The court held "that the buying, no less than the selling, of grain under such circumstances was a part of interstate commerce." On page 55 of the Lemke case, the court refers to cases in which "we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of federal control." The court then says, "Cases of that type are not in conflict with principles recognized as controlling here. None of them indicates, much less decides, that interstate commerce does not [fol. 140] include the buying and selling of products for shipment beyond state lines."

Under that authority, there can scarcely be any doubt that the selling of tobacco at the Georgia warehouses for shipment to other states is a part of interstate commerce.

In the Lemke case, the court said, "Even when the particular subject remains unregulated by Congress, a State cannot lay burdens on interstate commerce in the guise of police regulations to protect the welfare of her people."

Then, in this tobacco case, the question is whether the fixing of auction fees and weighing and handling fees places any burden on interstate commerce. I do not think so. But the reason I do not think so is because, in my opinion, the plaintiff warehousemen do not enjoy a monopoly and

are, therefore, not an indispensable part of the interstate business. If these nonresident warehousemen had a monopoly on the Georgia tobacco business, and, if without them, the crops could not be sold and put into interstate commerce, and, if no persons except these warehousemen, who are members of the Tobacco Warehousemen's Association, could engage in the warehouse business, and if the growers for lack of financial ability could not rent or build warehouses and employ skilled men to operate them, or if the purchasing companies were controlled by the warehousemen or were in a conspiracy with them and refused to send buyers, then, in my opinion, the warehousemen would be so indispensably necessary to the interstate transaction as to become a part of it. If such should be the case, it would not be necessary to show that the act is confiscatory as to all the warehousemen and thus bring it within the due process clause, but any regulation under which only a few could operate at a profit would place a burden on interstate commerce.

Finding of Fact No. "19" is as follows: "It is not proven what each or any warehouseman, individual or corporate, [fol. 141] lost in revenue by reason of the scale of charges prescribed by the act attacked. It is not denied that some warehousemen earned a satisfactory profit. It is not proven that in instances where a loss occurred such loss was not due to excessive competition, ill advised loans, unnecessary expenses in buying influence or hauling customers' tobacco, or other causes than the reduction in charges. The testimony as to the effects of the act attacked is as to the group of warehousemen who are complainants, rather than to the effect on each one, and even then it is not proven that all the losses are traceable to the reduction in charges rather than to other causes."

The "other causes" referred to in that finding would exist as well under the act as without it. In finding number "6", the warehousemen are referred to as "skilled and experienced warehousemen." They are in the business to make money. Those practices suggested in finding number "19" as possibly causing the losses must be regarded by these skilled and experienced warehousemen as helpful to the business. Those practices and the strenuous competition would increase rather than decrease under the act, because profit depends upon volume.

The court finds in number "15", that the tobacco season

is short and that growers have to rush their tobacco to market. That fact will remain true under the act, making it necessary that more than a few warehouses operate in order to handle the crop in so short a time.

Therefore, if the warehouse business is a monopoly and is a part of interstate commerce, and if skilled and experienced warehousemen operate at a loss, except some who "make a satisfactory profit", then a regulation of fees which makes it impossible for the warehouse business in [fol. 142] general to operate at a profit, though some might make a profit, would have the effect of placing a burden on interstate commerce.

But, as before stated, the contention of the growers that there is a monopoly (which logically would cause the act to be an interference with interstate commerce) is not, in my opinion, supported by the evidence.

I agree that the act does not burden interstate commerce, but I do so because I think there is no monopoly, and for the same reason I think the warehouse business is not "affected with a public interest."

If these warehousemen did have a monopoly in the sense hereinbefore stated, the business would undoubtedly be impressed with a public interest which would authorize regulation. But when there is no monopoly and the business is open and there are no conditions, such as prohibitive cost, to prevent others from engaging in it, and when the growers have at their command complete power to compel reasonable charges or to drive out of business those who charge excessive fees, then there is no reason that I can see why such a business should be regulated to the extent of fixing the prices to be charged for services.

The Nebbia case, 291 U. S. 502, does not control this case. The court says, "affected with a public interest" means only that the business is subject to the police power and that the absence of monopoly is not controlling, if there are other reasons for regulation. But the Nebbia case makes it clear that, as to power to regulate, each case stands on its own facts. There being no monopoly in the tobacco case and there being no other reason for regulation in the public interest, the Nebbia case does not demand the upholding of the act now in question.

Bascom S. Deaver, U. S. District Judge.

[File endorsement omitted.]

[fol. 143] In United States District Court for the Middle District of Georgia, Valdosta Division

In Equity. No. 88

C. R. Townsend and Park Bernard, a Co-partnership Known as Townsend & Bernard, Doing Business as Cook County Warehouse, et al., Complainants,

vs.

M. J. Yeomans, As Attorney General for the State of Georgia, et al., Defendants

Decree—Filed November 27, 1936

This case same on regularly for trial and the Court has heard and considered the evidence offered by the plaintiffs and defendants respectively. Oral arguments of counsel have been made and the Court has given due consideration to the briefs filed by counsel for the parties respectively, and has made and entered its findings of fact and conclusion of law.

And Now, being fully advised in the premises, it is upon consideration, ordered, adjudged and decreed by the Court that all issues of fact and law involved be, and the same are found in favor of the defendants and against complainants as set out in the findings of fact and conclusions of law made and entered by the majority members of the Court, and that all the prayers of the bill of complaint, as amended, be, and the same are, denied, and that said bill of complaint, as amended, be, and the same is, hereby dismissed, at the cost of complainants, and that the restraining order heretofore entered in said cause be vacated and set aside. [fol.144] This Court, however, reserves the right hereafter to pass such orders as may be necessary or proper for the disbursement of the fund paid into the registry of the Court pursuant to orders heretofore entered, including the right to assess the cost of such distribution, and to enter judgment therefor, and to determine the propriety of any claim on the part of counsel for defendants, or any of them, for an award of compensation to be allowed from said fund and as well the amount thereof, and for those

purposes, but none other, this Court reserves jurisdiction of said case.

This — day of November A. D. 1936.

E. R. Holmes, U. S. Circuit Judge. Wm. H. Barrett, U. S. District Judge.

[File endorsement omitted.]

[fol. 145] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF INTENTION TO APPEAL—Filed December 12, 1936

To the Attorney General for the State of Georgia and the Other Defendants in the Above Numbered and Styled Cause:

Please take notice that it is the intention of C. R. Townsend and Park Bernard, a partnership known as Townsend & Bernard, doing business as Cook County Warehouse, and each of the individuals, partnerships and corporations named as plaintiffs in the bill as amended in the above numbered and styled cause, to enter an appeal in the above numbered and styled cause from the final decree herein dated November —, 1936, entered and filed November 27, 1936, on petitioners' application for injunctive relief against the Act of the General Assembly of the State of Georgia of March 28, 1935. Said appeal will be presented for allowance to the United States District Judge at his Chambers, Post Office Building, Macon, Georgia, on December 12, 1936, at 12 o'clock Noon.

[fol. 146] Please be present if you are so advised in the premises, in person or by your attorney.

This 4th day of December, 1936.

J. O. Gibson, E. Kontz Bennett, E. K. Wilcox, Robt. C. Alston, W. H. Sibley, Solicitors for Complainants. Wilcox, Connell & Wilcox, Bennett & Bennett, Alston, Alston, Foster & Moise, of Counsel.

Service of the foregoing notice is acknowledged; copy received; all other and further service or notice is hereby waived.

This 5th day of December, 1936.

M. J. Yeomans, Atty. Genl.; O. K. Dukes, Asst. Atty. Genl.; L. W. Branch, Quitman, Ga.; E. D. Rivers, Lakeland, Ga.; M. D. Dickerson, Douglas, Ga., Solicitors for Defendants.

[File endorsement omitted.]

[fol. 147] IN UNITED STATES DISTRICT COURT

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal

C. R. Townsend and Park Bernard, a partnership known as Townsend & Bernard, doing business as Cook County Warehouse at Adel, Cook County, Georgia; W. L. Leath, doing business as Leath's Warehouse at Adel, Cook County, Georgia; H. A. Easley and E. H. Corey, a partnership known as Easley & Corey, doing business as Easley Warehouse at Baxley, Appling County, Georgia; E. V. Wimbish and James E. Walker, Jr., a partnership known as Wimbish & Walker, doing business as Planters Warehouse at Baxley, Appling County, Georgia; W. B. Clark and J. J. Gibbons, a partnership doing business as Clark Warehouse at Baxley, Appling County, Georgia; A. P. Brantley and R. M. Sanford, a partnership known as R. M. Sanford & Co., doing business as Brantley Warehouse at Blackshear, Pierce County, Georgia; W. E. Fenner and Paul Morgan, a partnership known as Paul Morgan & Company, doing business as Big Z Warehouse at Blackshear, Pierce County, Georgia; E. E. Bullock and Dan Currin, a partnership doing business [fol. 148] as Farmers Warehouse at Blackshear, Pierce County, Georgia; W. H. Soaper, R. A. Hughes and Johnnie Wilkins, a partnership doing business as Soaper Warehouse at Douglas, Coffee County, Georgia; W. G. Vann and J. S. Bernard, a partnership doing business as Red Warehouse at Douglas, Coffee County, Georgia; F. S. King, Leon Oettinger, and L. A. Barker, a partnership doing business as

O. K. Tobacco Warehouse at Douglas, Coffee County, Georgia; J. M. Easterly and Frank Emerson, a partnership doing business as Farmers Brick Warehouse at Douglas, Coffee County, Georgia; J. H. McLean and R. A. George, a partnership known as McLean & George, doing business as Growers Warehouse at Douglas, Coffee County, Georgia; J. E. O'Hara and R. Y. Scruggs, a partnership known as O'Hara & Scruggs, doing business as Gold Leaf Warehouse at Hahira, Lowndes County, Georgia; H. J. Hurdle, doing business as Farmers Independent Warehouse at Hahira, Lowndes County, Georgia; J. R. Smith and Hamp Powell, a partnership known as Smith & Powell, doing business as Hahira Warehouse at Hahira, Lowndes County, Georgia; W. L. House, doing business as Farmers Warehouse, at Hazlehurst, Jeff Davis County, Georgia; S. A. McConkey and H. I. Johnson, a partnership known as McConkey & Johnson, doing business as Planters Warehouse at Hazlehurst, Jeff Davis County, Georgia; C. H. McGowan, doing business as Metter Warehouse at Metter, Candler County, Georgia; W. P. Moore and B. T. Cannon, a partnership doing business as Grower's Warehouse at Metter, Candler County, Georgia; W. E. Fenner and J. B. Fenner and R. R. Meador, a partnership doing business as Farmers Warehouse at Moultrie, Colquitt County, Georgia; H. B. Wallace and L. R. Barber, a partnership doing business as Peoples Warehouse at Moultrie, Colquitt County, Georgia; C. K. Smith and F. R. Pidcock, Jr., a partnership doing business as Central Warehouse No. 1 and Central Warehouse No. 2, [fol. 149] both located at Moultrie, Colquitt County, Georgia; Blake's Tobacco Warehouse, Inc., a corporation under the laws of Florida, operating Blake's Tobacco Warehouse at Moultrie, Colquitt County, Georgia; Fred W. Brown and Charles H. McDaniel, a partnership known as Brown & McDaniel, doing business as Planters Warehouse at Nashville, Berrien County, Georgia; C. B. Strickland and George E. Love, a partnership known as Strickland & Love, doing business as Independent Warehouse at Nashville, Berrien County, Georgia; W. M. Talley and Roy Talley, a partnership known as Talley Brothers, doing business as Union Warehouse at Nashville, Berrien County, Georgia; J. D. Rogers, trading as J. D. Rogers Company, operating The Big Dixie Warehouse at Pelham, Mitchell County, Georgia; J. E. Jones and W. C. Spence, a partnership known as Jones & Spence, operating Pelham Warehouse at Pelham,

Mitchell County, Georgia; W. E. Cobb and H. P. Foxhall, a partnership doing business as Cobb & Foxhall Warehouse at Statesboro, Bulloch County, Georgia; R. E. Sheppard; doing business as Sheppard's Warehouse at Statesboro, Bulloch County, Georgia; W. E. Fenner and C. G. Weathersby, a partnership doing business as Fenner's Warehouse at Tifton, Tift County, Georgia; T. B. Smothers and O. G. Calhoun, a partnership doing business as Smothers & Calhoun and operating Banner Warehouse at Tifton, Tift County, Georgia; Tifton Investment Company, a corporation under the laws of Georgia, operating the Twin Brick Warehouse and the Farmers Warehouse, both located in Tifton, Tift County, Georgia; E. L. Moore and B. T. Cannon, a partnership doing business as Alliance Warehouse at Valdosta, Lowndes County, Georgia; L. E. Knott, doing business as Savannah Avenue Warehouse at Valdosta, Lowndes County, Georgia; N. B. Smith, F. H. [fol. 150] Wright, George D. Foxworth and Jeff J. Cozart, a co-partnership doing business as Nat Smith's Warehouse at Valdosta, Lowndes County, Georgia; B. B. Saunders, doing business as B. B. Saunders' Warehouse at Valdosta, Lowndes County, Georgia; L. C. Pruitt and J. K. Larkins, a partnership doing business as Farmers Tobacco Warehouse at Waycross, Ware County, Georgia; Waycross Tobacco Warehouse Company Inc., a corporation operating the Waycross Tobacco Warehouse at Waycross, Ware County, Georgia; Jack Meadows, J. B. O'Connor, Will Brown and W. M. Bowland, a partnership doing business as Vidalia Tobacco Warehouse No. 1 and Vidalia Tobacco Warehouse No. 2, both located at Vidalia, Toombs County, Georgia; J. C. Vann and W. W. Bernard, a partnership doing business as Vann's Tobacco Warehouse No. 1 and Vann's Tobacco Warehouse No. 2, both located at Vidalia, Toombs County, Georgia; Alverson-Phillips Warehouse Company, a corporation under the laws of Georgia, operating during the 1936 season Central Warehouse No. 2, at Moultrie, Colquitt County, Georgia, and Blake's Tobacco Warehouse, at Moultrie, Colquitt County, Georgia; and Lawrence M. Russell and Frank Wallace, who operated during the 1936 season Farmers Warehouse, formerly Pelham Warehouse, at Pelham, Mitchell County, Georgia, as plaintiffs in the bill as amended in the above numbered and styled cause, feeling themselves aggrieved by the final decree of the United States District Court for the Middle District of

Georgia, Valdosta Division, dated November —, 1936, and entered and filed November 27, 1936, in the above numbered and styled cause, pray that an appeal be allowed to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith.

[fol. 151] Petitioners pray that an appeal be allowed and that an order be entered fixing the amount of the bond thereon, and that citation be issued as provided by law and that a transcript of the record (or the original record as the case may be), proceedings and decree, duly authenticated, be transmitted to the Supreme Court of the United States.

ASSIGNMENT OF ERRORS

Appellants assign the decree in this cause as error because of the following actions in the record of the proceedings in this cause; that is to say:

The statutory District Court erred:

1. In entering its final decree dated the 27th day of November, A. D. 1936, wherein it ordered, adjudged and decreed "that all issues of fact and law involved be, and the same are, found in favor of the defendants and against complainants (appellants) as set out in the findings of fact and conclusions of law made and entered by the majority members of the Court" and denying all the prayers of the bill of complaint, as amended, and dismissing said bill of complaint as amended, at appellants' cost and vacating the restraining order theretofore granted by said Court in this cause. The said finding is contrary to the evidence, without evidence to support it, and is contrary to law.

2. In adjudging and finding that:

"(10) Prior to 1927 the tobacco warehousemen in Georgia for many years, if not from the beginning of the industry, had maintained and exacted from sellers of tobacco a [fol. 152] uniform schedule of charges substantially, if not identically, the same as the schedule fixed by the Act of 1935 the validity of which is now being challenged by complainants";

for that said finding of fact is contrary to the evidence and is without evidence to support it.

3. In adjudging and finding that:

"(13) By reason of their (appellants) control of the warehouses in which tobacco is sold, in the normal and customary course of marketing in Georgia, the warehousemen have, unless regulated by law, an unduly coercive control over prices charged the growers for services";

for that said finding is contrary to the evidence and is without evidence to support the same.

4. In adjudging and finding that

"(17) The propriety of charging materially or any more for handling tobacco in Georgia than in the Carolinas is not established."

for that said finding is contrary to the evidence and is without evidence to support the same.

5. In adjudging and finding that:

"(19) It is not proven what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the act attacked. It is not denied that some warehousemen (appellants) earned a satisfactory profit. It is not proven that in instances where a loss occurred such loss was not due to excessive competition, ill advised loans, unnecessary expenses in buying influence or hauling customers' tobacco, or other causes [fol. 153] than the reduction in charges. The testimony as to the effects of the act attacked is as to the group of warehousemen who are complainants (appellants), rather than to the effect on each one, and even then it is not proven that all the losses are traceable to the reduction in charges rather than to other causes."

Said finding is contrary to the evidence and without evidence to support it; and is contrary to law in that said finding puts on complainants an undue burden of proof.

6. In adjudging and finding that:

"(20) The complainants through the Warehousemen's Association and their common agreement as to the fees to be charged by them for services rendered maintain and enjoy a virtual monopoly in the field covered by their operations";

for that said finding is contrary to the evidence and without evidence to support it and is contrary to law.

7. In adjudging and finding that:

"(21) The business of tobacco warehousemen as conducted in Georgia in the year 1935 and for some years prior thereto was such as to cause it to be 'affected with a public interest' and 'clothed with a public use'."

Said finding is contrary to the evidence and without evidence to support it, and is contrary to law.

8. In adjudging and finding that:

"(22) The scale of charges prescribed by the said Georgia Act of 1935 is not unreasonable, arbitrary and capricious and is reasonably adapted to accomplish the desired results."

[fol. 154] Said finding is contrary to the evidence and the Court should have found on the record that the scale of charges prescribed by the said Georgia Act of 1935 is unreasonable, arbitrary and capricious. That said Act is unreasonable, arbitrary and capricious as it affects and applies to each appellant and as it has affected and applied to each of them at all the times involved in this cause, and that said Act and the enforcement thereof has the effect of depriving each and all the appellants of their respective properties without due process of law, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

9. In adjudging and finding that:

"(23) The fixing of a scale of prices for services rendered by the warehousemen does not burden or interfere with interstate commerce."

Said finding is assigned as error for that the transactions complained of were each and all in interstate and foreign commerce; that the auction sales of the tobacco for sale in parcels at said auction sales and the sale and purchase of the same were for shipment out of the State of Georgia in interstate and foreign commerce, and the State of Georgia had no power to fix the maximum charges to be made by appellants who are the owners or operators of said to-

bacco warehouses for that the fixing of said prices for said services was the fixing and regulating of charges for carrying on interstate and foreign commerce and intercourse in interstate and foreign commerce and was an unlawful burden on such commerce and contrary to the provisions of Article I, Section 8, paragraph 3, of the Constitution of the United States, which is as follows:

[fol. 155] "The Congress shall have power • • • To regulate commerce with foreign nations also with the several States and with Indian tribes,"

upon which appellants rely.

10. For that the Court erred in its fourth conclusion of law in finding and holding as follows:

"As we understand the contention of complainants it is, that because the acts of the warehousemen constitute one step in getting the tobacco to the manufacturers and such manufacturers all, or practically all, reside out of this State and it was known at the time the services were rendered by the warehousemen that the ultimate destination of the tobacco would be out of this State, that such services constituted a part of interstate commerce. We cannot agree with this contention. If sound, logically it would lead us to the conclusion that the very planting and harvesting of tobacco were parts of interstate commerce, for the reason that each of such acts was with the knowledge that all or practically all of the tobacco would ultimately move out of this State." The court cites Chasseniel v. Greenwood, 291 U. S. 584, 587.

Whereas, the Court should have found on the record and should have held that after the tobacco had been grown, assorted and brought to the warehouses and put in rows, it was offered for sale at auction to the buyers; that those buyers in the instances at hand were non-residents of the State of Georgia and representatives of tobacco manufacturing companies located out of the State of Georgia and in the United States and foreign countries; that the tobacco [fol. 156] was delivered upon the close of the auction to those persons for shipment to points of destination out of the State of Georgia and in the United States or foreign countries; that no place of manufacture of tobacco of the

kind grown in Georgia as sold at the warehouses involved is located in the State of Georgia; and the Court should also have found that the sales at these auctions were made in the process of transfer of the tobacco from Georgia in interstate and foreign commerce and that the offering of the tobacco for sale, the bidding thereon and the sale thereof were in fact intercourse in interstate and foreign commerce and the business of tobacco warehousing as carried on by each of appellants is an instrumentality of interstate and foreign commerce and the fixing of the charges to be made by the tobacco warehousemen (appellants in this cause) was a direct burden upon that commerce and upon the actual direct conduct of said commerce, contrary to the provisions of the commerce clause of the Constitution of the United States (Article I, Section 8, Paragraph 3, of said Constitution, which has been hereinbefore set out).

PRAYER FOR REVERSAL

For which errors petitioners pray that the said decree of the United States District Court for the Middle District of Georgia, Valdosta Division, entered and filed November 27, [fol. 157] 1936, in the above entitled cause, be reversed and a decree rendered in favor of petitioners and for costs.

J. O. Gibson, E. Kontz Bennett, E. K. Wilcox, Robert C. Alston, W. Hart Sibley, Solicitors for Petitioners. Wilcox, Connell & Wilcox, Bennett & Bennett, Alston, Alston, Foster & Moise, Of Counsel.

[fol. 158] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 12, 1936

The appellants in the above entitled cause having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree dated November —, 1936, and entered and filed in the above entitled cause by the United States District Court for the Middle District of Georgia on November 27, 1936, and from each and every part thereof, and due notice having been given of the intention to apply for said appeal to the Attorney Gen-

eral for the State of Georgia and the other named defendants in this cause, and having presented and filed their petition for appeal, assignment of errors, and prayer for reversal pursuant to the statutes and the rules of the Supreme Court of the United States in such cases made and provided;

After consideration it is now here ordered that the appeal of C. R. Townsend and Park Bernard, a partnership known as Townsend & Bernard, doing business as Cook County Warehouse, and each of the named complainants in the original bill as amended in this cause, be and the same is hereby allowed to the Supreme Court of the United [fol. 159] States from the United States District Court for the Middle District of Georgia in this cause, as provided by law.

It is further ordered that the Clerk of the Court appealed from shall prepare and certify a transcript of the record, or the original record, as the case may be, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States, so that the same shall be in said Court within forty days of this date.

It is further ordered that security for costs on appeal be fixed in the sum of twenty-five hundred dollars and a bond with good and sufficient surety in said amount, to be approved by this Court, be filed, conditioned upon the said appellants prosecuting their appeal to effect and answering all costs if they fail to make their plea good.

This 12 day of December, 1936.

E. R. Holmes, Judge United States Circuit Court of Appeals. Wm. H. Barrett, Judge United States District Court. Bascom S. Deaver, Judge United States District Court.

[File endorsement omitted.]

[fols. 160-178] Supersedeas bond on appeal for $2,500.00, approved and filed December 14, 1936, omitted in printing.

[fols. 179-181] Citation, in usual form, showing service on M. J. Yeomans et al., filed December 12, 1936, omitted in printing.

[fol. 182] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR INJUNCTION PENDING APPEAL—Filed December 12, 1936

Come now the complainants in the bill as amended in the above numbered and styled cause (appellants) and with leave of Court first had file this their motion for an injunction pending the appeal to the Supreme Court of the United States of this cause, and for grounds thereof show:

1

That your movants are complainants in the above numbered and styled cause in this Court and that on November 27, 1936, a decree was entered therein finding all issues of fact and law involved in favor of the defendants and against the complainants and that all prayers of the bill of complaint as amended were denied and the bill dismissed.

2

Movants on December 12, 1936, filed their petition for appeal, assignments of errors, and prayer for reversal, which [fol. 183] was duly allowed. Citation has issued and been served and an appeal and supersedeas bond in the sum of $2500.00 has been approved and filed.

3

Movants show that this cause involves an attack upon a statute of the State of Georgia reducing the fees movants may charge for their services as tobacco warehousemen in the State of Georgia and that heretofore this Court temporarily enjoined the enforcement of said statute on condition that movants deposit in the registry of this Court the difference between the scale of charges heretofore made by movants and those prescribed by the statute under attack.

4

Movants show that already there have accumulated in the registry of this Court large sums of money, representing the difference between these charges as collected in 1935 and 1936 tobacco selling season.

5

Movants show that it would be inequitable to disburse said fund and that should they prosecute their appeal to effect and said fund be disbursed prior thereto movants would suffer irreparable loss and injury.

6

Movants file this motion under Equity Rule 74, praying that the injunction heretofore in effect be continued pending the appeal in this cause, for that another tobacco selling season might arrive before this appeal is disposed of.

Wherefore, the premises considered, movants pray that this Court do enter an order restoring the injunction heretofore in effect during the pendency of the appeal, upon such [fol. 184] terms as to bond or otherwise as the Court may consider proper for the security of the rights of defendants.

Movants pray for such other and further relief as may be meet and proper in the premises.

J. O. Gibson, E. Kontz Bennett, E. K. Wilcox, Robt. C. Alston, W. Hart Sibley, Solicitors for Movants. Wilcox, Connell & Wilcox, Bennett & Bennett, Alston, Alston, Foster & Moise, Of Counsel.

Duly sworn to by Wm. Hart Sibley. Jurat omitted in printing.

[fol. 185] Notice of intention to file the above and foregoing motion for injunction pending appeal is acknowledged; copy of same received. We consent to the entry of a proper order on said motion.

This 12th day of December, 1936.

M. J. Yeomans, Attorney General; O. H. Dukes, Asst. Attorney General; Lee W. Branch, W. D. Dickerson, E. D. Rivers, Solicitors for Defendants.

[fol. 186] ORDER

The above and foregoing application for injunction pending appeal having been presented, it is ordered filed.

It is further ordered that the decree of this Court entered November 27, 1936, be superseded and that the temporary in-

junction heretofore granted by the Court, by order of July 27, 1935, and continued and amended by order of July 15, 1936, be and the same is hereby restored and continued in force pending the appeal of this cause to the Supreme Court of the United States, and the fund now held in the registry of this Court shall be held intact pending said appeal; on condition nevertheless that should the appeal be not disposed of prior to July 15, 1937, the appellants, or some of them, shall give bond, in addition to the bond now of file in this Court, in the further and additional sum of $2500.00, with surety approved by the Clerk of this Court, said bond to be conditioned and on the same terms as the bond required in the order of this Court dated July 27, 1935.

This 12 day of December, 1936.

E. R. Holmes, United States Circuit Judge. Wm. H. Barrett, United States District Judge. Bascom S. Deaver, United States District Judge.

[File endorsement omitted.]

[fol. 187] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR EXTENSION OF TIME TO PERFECT RECORD—Filed December 12, 1936

Come now the complainants, now appellants, in the above numbered and styled cause, and with leave or court first had file this their motion and show as follows:

1

That on the 12th day of December, 1936, movants' appeal from the decree entered in this Court November 27, 1936, was duly allowed and citation has been issued requiring the appellees to appear in the Supreme Court within forty days from the date thereof, to-wit, December 12, 1936.

2

Movants show that the record in this cause is voluminous and it is impractical, if not impossible, to perfect said rec-

ord and print the same within the time allowed by the rules of this Court and of the Supreme Court of the United States.

[fol. 188] Wherefore, movants pray that an extension of time be granted them within which to complete the record in this cause.

J. O. Gibson, E. Kontz Bennett, E. K. Wilcox, Robt. C. Alston, W. Hart Sibley, Solicitors for Appellants. Wilcox, Connell & Wilcox, Bennett & Bennett, Alston, Alston, Foster & Moise, Of Counsel.

Duly sworn to by Wm. Hart Sibley. Jurat omitted in printing.

[fol. 189] Notice of intention to file the above and foregoing motion for extension of time is acknowledged, copy of same and proposed order received. We consent to the entry of said order.

This 11th day of December, 1936.

M. J. Yeomans, Atty. General; O. H. Dukes, Atty. General; Lee W. Branch, W. D. Dickerson, E. D. Rivers, Solicitors for Appellees.

[fol. 190] ORDER

The above and foregoing motion for extension of time within which to complete the record having been presented to me, and all parties of record consenting thereto, after consideration thereof, it is ordered filed.

It is further ordered that the appellants be allowed thirty additional days from January 21, 1937, within which to compile and complete the record in this cause for appeal to the Supreme Court of the United States.

This 12 day of December, 1936.

E. R. Holmes, United States Circuit Judge. Wm. H. Barrett, United States District Judge. Bascom S. Deaver, United States District Judge.

[File endorsement omitted.]

[fol. 191] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR EXTENSION OF TIME TO PERFECT RECORD—Filed February 11, 1937

Come now the Complainants, now Appellants in the above numbered and styled cause, and with leave of the Court first had, file this their motion and show as follows:

1

That on the 12th day of December, 1936, movants' appeal from the decree entered in this Court on November 27, 1936 was duly allowed, and citation duly issued requiring the Appellants to appear in the Supreme Court of the United States within forty days from the date thereof, to-wit: December 12th, 1936.

2

Movants show that by an order of this Court, dated December 12th, 1936, additional time within which to perfect the record was granted, and the return date on said citation was extended for thirty days, to-wit: from January 21, 1937 to February 20, 1937.

3

Movants show that the record in this cause is quite voluminous, and that some of the exhibits introduced in evidence by movants, as well as appellees, have been misplaced [fol. 192] or lost and that additional time is required within which to perfect the record.

Wherefore, movants pray an additional extension of time be granted them within which to complete the record in this cause.

J. O. Gibson, E. Kontz Bennett, E. K. Wilcox, Robt. C. Alston, Wm. Hart Sibley, Attorneys for Movants.

Duly sworn to by Wm. Hart Sibley. Jurat omitted in printing.

[fol. 193] [Title omitted]

We, the undersigned counsel for appellees, consent to an order extending the time for perfecting the record on appeal in the above stated case, for an additional two weeks from February 20, 1937.

This February 9, 1937.

M. J. Yeomans, O. H. Dukes, E. D. Rivers, W. D. Dickerson, Geo. R. Lilly, Lee W. Branch.

[File endorsement omitted.]

[fol. 194] ORDER

The above and foregoing motion for additional extension of time within which to complete the record having been presented to me, and all parties of record consenting thereto, after consideration thereof, it is ordered filed.

It is further ordered that the appellants be allowed further time within which to complete the record and they are hereby allowed two weeks additional time from February 20th, 1937, within which to compile and complete the record in this cause for appeal to the Supreme Court of the United States.

This February 17th, 1937.

E. R. Holmes, U. S. Circuit Judge. Wm. H. Barrett, U. S. District Judge. Bascom S. Deaver, U. S. District Judge.

The above order filed in office February 18th, 1937.

George F. White, Clerk, by W. E. Perry, Deputy Clerk.

[fol. 195] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed December 12, 1936

To M. J. Yeomans, Attorney General for the State of Georgia, and each of the defendants in the above numbered and styled cause, named in the original bill as amended:

Please Take Notice that by order of the above entitled Court, dated the 12th day of December, 1936, entered and

filed the 12th day of December, 1936, appeal to the Supreme Court of the United States by the complainants in the original bill as amended in the above entitled cause has been taken and allowed.

J. O. Gibson, E. Kontz Bennett, E. K. Wilcox, Robt. C. Alston, W. Hart Sibley, Solicitors for Appellants. Wilcox, Connell & Wilcox, Bennett & Bennett, Alston, Alston, Foster & Moise, Of Counsel.

[fol. 196] Received a copy of the foregoing notice, this 14th day of December, 1936.

M. J. Yeomans, Attorney General; O. H. Dukes, Asst. Attorney General; Lee W. Branch, W. D. Dickerson, E. D. Rivers, Solicitors for Appellees.

[File endorsement omitted.]

[fol. 197] In United States District Court, for the Middle District of Georgia, Valdosta Division

In Equity.

C. R. Townsend and Park Bernard, a Partnership Known as Townsend & Bernard, Doing Business as Cook County Warehouse, et al., Complainants,

vs.

M. J. Yeomans, Attorney-General for the State of Georgia, et al., Defendants

Brief of Evidence—Filed March 3, 1937.

B. B. Saunders, sworn in behalf of the Complainants, testified as follows:

Direct examination:

My name is B. B. Saunders and my residence, Valdosta, Ga. I am in the warehouse business, selling tobacco, regular tobacco warehouse. I have been engaged in the tobacco warehouse business 22 years. I operate tobacco warehouses at Aberdeen, N. C., Asheville, N. C., and in Valdosta, Ga.

I am the owner of B. B. Saunder's Warehouse, at Valdosta, Ga.; own it independently. It is not a partnership or corporation. I have been engaged in the warehouse business at Valdosta for 12 years. I am one of the plaintiffs in this case, and I executed the affidavit to the original bill. The allegations in that bill are true. The allegations of fact contained in the bill and in the amendment thereto are true. I executed the affidavit on the amendment also. In operating a tobacco warehouse business in Georgia, we have to do a great deal more work than we do in other States, at least personally, I do, because I live there and I assist the farm- [fol. 198] ers, instructing them. We have lots of new growers through Georgia and Florida. That is true because they are not experts and have not been growing tobacco as long as the people in North Carolina and other States in the tobacco belt, and it is a new thing. In fact, a large part of the territory in Georgia is in the Valdosta section, and they only started 12 years ago, and we have tried to teac.. the farmers throughout those years how to plant the seed, look after the beds, and to cultivate it, and also to pick it and cure it. But we still have to do that for the farmers, and we do it without charge. In other words, I make no charges for my services while canvassing the country in that way; and of course it costs us more to operate there on account of the short season that we have. In the Valdosta market I serve people from Climax, Georgia, which is around 80 some odd miles from Valdosta, and even over as far as Jackson County, Florida. I sell some tobacco from Glenwood and Delwood, Florida. That is near Marianna, Fla. Then I go to Mayo, Fla., which is about 80 miles south, and I work down as low as 15 miles from Gainesville, Fla. That is in Alachua County, Fla. That is about 90 miles. All the way back through that section of the country, I visit the farmers during the spring and summer, helping them in any way I can. And then in the marketing season when we have to hire experienced men from North Carolina as auctioneers, bookkeepers, clip-men, and ticket-markers, we have to pay them a pretty good salary because they can't do anything else. In other words, a man comes to Georgia and it knocks him out of South Carolina, so he has to figure on the eastern North Carolina market, and if he misses that he has to figure on Kentucky, and there are only 8 months in the year that he can work; so he has got to get enough out of 1, 2, or 3 seasons to make up for a year's salary.

And another thing in Georgia that makes it very expensive [fol. 199] is the rush, the way they sell tobacco. This year, for instance, and many other years are the same, the farmers rush in there with it, and we have the floor all covered. We have to unload this tobacco, stack it, and then after the house is cleared, take it up, weigh it, and put it on the floor, which is double expense. In other words, we can take the tobacco off the truck, weigh it and put it on the floor right from the truck with one-half the expense we have to take it off the truck and stack it and then weigh it and put it on the baskets and place it on the floor. With that additional work it becomes necessary to hire additional clerks to tend it and watch it. And then when the floor is cleared we go back and take it up the same tobacco and carry it to the scales, weigh it and put it on the floor. I mean to say that when a farmer comes in with a truck of tobacco, we have to take it off and stack it and get it ready to place on the floor ready for sale. That means we have to handle it twice. In the block sales down there, as I said, it is necessary to hire additional clerks. Block sales mean that our warehouse and all warehouses in the town are full and the farmers cannot put any more on the floors, but they can stack it in high stacks in sheds, and get it out of the weather; and when the tobacco on the floor is sold and moved, that tobacco that is stacked comes ahead of tobacco coming in later. It is just like going to mill. We try to take the tobacco and sell it as the farmers bring it into the warehouse. We very often have to rent buildings in those big jams like that to get them out of the weather and store the tobacco. We bear that expense. I had two buildings in which I stored tobacco for them and paid rent and insurance at no charge to the growers whatever; and when they cannot sell the tobacco right away, we advance them money on the tobacco until it can be put on the floor and sold, and then we deduct [fol. 200] that from the sale when it is sold. We have to carry insurance on all this tobacco stacked or on the floor from the day we open, and we cover it with insurance to protect the farmer in case of fire or in case it happens to be destroyed. We have to be responsible for every pile of tobacco that is brought into our place. After it gets across our door, if it is lost, we have to pay for it, whether it is stolen, slipped out, or moved, or the farmer takes it out himself, and comes back and we can't prove he did it. Then, in addition to that, we have to keep, as

I said, more labor. I work around 60 to 70 truck hands in Georgia to unload the farmers' tobacco. They drive their trucks in on my market, into my warehouse, they get off and stand there with their hands crossed, and I have to lift it off the truck, set it down, untie it, dump it, carry it to the scales and put it on the floor. Now, in those other States, they pick their own tobacco, pack it, and in 90 per cent of the cases they put it on the floor, and I never have to touch it. That is something we have to do in Georgia more than in the other States. I am familiar with the general custom of conducting a warehouse in Georgia and in North Carolina. I understand the system, the way they all operate, supposed to. I have to keep a day crew and a night crew to unload the tobacco. I furnish a crew at night the same as day time, because we unload a big part of the tobacco at night in Georgia. I have an hour or an hour and a half at night that it slacks up, same way for the day time, and then it goes heavy all the rest of the time. I keep those hands all the time on the payroll and pay them whether they are working or not. It might be that by 10 o'clock we will have none and by 10:30 I might need 50 men. And I have to hire more weigh-men. Now, this year, I have 2 weigh-men for the night and 2 weigh-men for the day time, where I don't use but one in North Carolina. And in stacking the tobacco, I [fol. 201] have to have additional clerks to tend it right, so as to get his name and postoffice and address on it, and then go back there and take it up, so there is not a pile lost. The selling season in Georgia varies. Sometimes it begins in July, the last day of July, mostly around the first of August, but we have a few years opened in July. Sometimes it runs for two weeks, sometimes five. It has run as long as five weeks, but the last few years about three to three and a half weeks. The selling season in North Carolina varies on different markets, according to the size of the markets. Some markets will open in September and will run probably to February or maybe to March, some years; that all depends on the crop as to how they market it. Wilson and some of the markets in North Carolina probably will run from September to March. Some years with shorter crops, they would close earlier, of course. Now, in the market I am on, we usually open around September 8 to September 20, and sometimes run as long as to the middle of January; ordinarily we close though on the 15th of December. I have

to hire a great many more common laborers in Georgia than in North Carolina; I also have to hire more field men there. Field men are solicitors; they go out over the territory and visit the growers and solicit business for my warehouse. I do some of that work myself; I work from February until the markets close myself. We hire the field men usually about one month before the market opens, sometimes 3, 4, or 5 weeks. We do not put them all on at one time, but around from 5 weeks to 3 weeks before the market opens. We use those men on the floor when the selling season opens, because they are acquainted with the growers and can give them better service, as they are acquainted with them. If he wants something done, why that man will do it for him. We use them as floor managers and driveway men, the men that work on the driveway, keeping the tobacco [fol. 202] separate. They come in with maybe 8, 9 or 10 farmers' tobacco on one big truck—well, we have to watch to get every farmer's exact number of sheets together and get it right. If anyone on the driveway or handling the tobacco there jams it, it makes a mix-up, and you will soon have trouble. You have to be careful not to have mix-ups in tobacco on the trucks as they come in, and you have to have competent help to do that, to help keep it straight, in those field men. I work most over the entire territory. I have farmers in Georgia to call me 100 miles, wire me, write me to come and assist and tell him about taking care of his tobacco. He wants help, and I get in my car and go and show him. And if I can't go, I will send one of my repreresentatives. Very often in difficult and bad seasons, we have it when they don't know how to cultivate tobacco, and they will send for us and we go and help them in that way. I would say that during a season I have an average, day and night, of 50 to 60 common laborers on my payroll. I won't be positive, just on unloading tobacco and handling it. During the season I have usually about 8 to 9 field-men. After their work in the field is through, I bring them into the warehouse. We have auctioneers in the warehouse. The auctioneer is the man who sells the tobacco when you are running a sale. We have book-men. They follow the sale and figure the sales as the tobacco is bid off, and they are called book-men. The book-man follows behind the sale, and there is a man called the clip-man, and he figures the sale with him. In other words, if a pile of tobacco is knocked off at 8¾, the bookman figures it at 8¾ and the clip-man

figures it at 8¾, and when they get the total, they call it and check it back and see that they are right, and that is why you have two men, one called a book-man and the other a clip-man in figuring a sale. Now, in Georgia we cannot operate with 1 book-man. We have to have a relief man, because one man can't stand it. So I hire an extra man to [fol. 203] relieve those men at times during the season. Then we have to have skilled men for weighers. They are experienced men; they have to be experienced men. It is a very important place. If a man sat looking out the door and the scale of a pile of tobacco, the sale on the pile of tobacco showed 340 pounds and he puts it down 140, or if he puts it down 440, it is very important, and you have got to have a man that is accurate to do that. Errors have been made and we do have them made yet with the best we can get sometimes, but I use 2 in the day time and 2 in the night. I use four men as weighmen. Then we have the ticket marker. That's the man that follows behind the buyers and the warehouseman and the auctioneer, right close behind, and when the last bid is put on it and the auctioneer closes that bid, this man marks it dollars and cents on the ticket and the buyer's name and drops the ticket on the pile of tobacco. That is another important place. If a pile of tobacco is knocked off at 23 and he marks it 33, it is too bad for me. I have lost $10 per hundred on that pile of tobacco. If he marks it under, it is the same way. The warehouseman follows the auctioneer in the sale. I have an extra man with me who goes in front, who starts the pile of tobacco off in bidding while I am behind the tobacco bidding and pushing the buyers for higher prices. This man on the front is pulling and examining the tobacco and he makes the opening bid to give it a fair start. He pulls the tobacco to see what is in it; there may be roots in the pile. Sometimes you find iron in it, and he's looking to see what it is, whether its good or bad tobacco, like that. The price a pile of tobacco brings depends on the grade of the tobacco. If the tobacco is not graded properly, it has considerable effect on the price, if it is a mixed pile, on what it brings, and the warehouseman pushes the price and bids, and very often has to buy a big [fol. 204] per cent. of this tobacco in order to help his trade, his customers, which very often sell for less money than he pays for it. I cannot say how many grades of tobacco there are. One tobacco company, the Export Tobacco Company, has 39 grades. Reynolds would probably buy some 7 or 8

grades maybe, Liggett & Myers practically the same and American practically the same, and Imperial has a good many grades, more grades than that. It is hard to tell especially as the season in the first selling days when there is just lugs and not so many grades. Lugs are the first leaves you pull from the bottom of the stalk. There is not so many grades then, but as you go up the stalk later on, from then on up to the tips, which may consist of from 24 to 16 leaves—a stalk varies—the grades increase and the companies then will put on more grades to take care of all those different types of tobacco. If a pile of tobacco has 2 or more different grades on it, it doesn't bring as much as it would if it was separated. That is true because there are 2 grades together, and they have got to be separated before you can get the value of each one, and they naturally will buy the pile in that shape by the low grade size. It will be bid for by the low bid unless it is separated into grades. That's why I ride the country and instruct the farmers, trying to show them how to prepare their tobacco to bring it to market in the best condition. It is not the warehouseman's duty to grade the tobacco, but we do that. It benefits us if it is graded properly, and it benefits the farmer. When the tobacco is shoddy, we do not get anything for our services; when the grade is high we can make a little money. I have just mentioned some of the floor help. We have then what we call the floor manager. The floorman is a trained man. His duties are to place the tobacco in rows, placing every man's lot together in the row so it will be easier for the bookman to figure it out as they come along. In other [fol. 205] words, if a bookman comes along and finds one pile of one man's tobacco in number 1 row and 3 piles in number 5 and not together, he only finds one pile in number 1 row and picks up the others here and there, and it makes it harder to figure one man's tobacco, so we try to put all lots together, so he can handle them at one time. We put all of one man's together in one series of piles called a lot, and the floor-man's duties is to keep that as near as possible right and it takes two men in the day and two at night to do that.

Then we have the driveway man, a man that has to call the farmer's name when he comes in driving his truck in. He gets off himself and is just as liable to walk off. We ask his name, how many lots and take it off. I mean, I do. Then my men start to the scale with it. If you do not get the

name right and the lots right, then there is a mix-up lot of tobacco, so we have a man standing there. When the tobacco is set off, he goes with it to the scales, say Bob Jones 9 lots, he says that, and he has to call "contract" or "no contract". That is whether grown under Government contract or not, and the scale man marks on the bill whether it is Government or not, so when it comes into the office the office will know whether it is taxable or whether a warrant is to be issued for it. We have four of those men that we work on the driveway day and night, at my warehouse. I just ordinarily use two clerks in the office, one of them called head bookkeeper and the other his assistant. They write the checks, check the charges as their duties. This year I had to use five in that office, five to take the place of two, because we had Government tobacco. We had to figure—had to go to the Government to write the warrant, and then we had this tax tobacco that had to be figured, the tax to the Government, and then they had an injunction down there, [fol. 206] some of the growers, against the Government from collecting this tax, and I had that to figure separate, because that had to go to the Clerk. So I had to pay three additional clerks in my office in order to handle the work this year. That is the bigger part of the force, except we have another man we call the check-out man. He is in charge of all the short tobacco. If a pile of tobacco disappears on the floor any time before the sale or after the sale, and this farmer doesn't get it, we have to have a man and a competent man to locate the pile of tobacco. You can figure what he has got to do when you think about him looking after 4,500 piles. You have got no little job in the way we sell the tobacco. Then we bill the companies with this tobacco, and if our bills show he bought 1010 piles and his receiving books show he did not buy but 1008, he deducts it off his bill and we lose it unless we can find a receipt or coupon for those piles of tobacco showing he got it. That's a loss on the warehouseman. When you go over the warehouse books you will see some losses. I don't know what became of the tobacco; nobody knows. The warehouseman pays it, the company pays nothing but for what he can show they got, and we pay for everything whether we have got it or not. This check-out man has to be competent to do that; I have two of them. I have a head man and an assistant that has to do that work. A company will send you a bill five

days after receiving the tobacco with say 19 or 40 piles short and the tobacco is shipped out and gone, and I have got a proposition to locate it, and you have got to locate it out of all tobacco sold or show the company a receipt or coupon where it received it; so you have got to go to work, because the burden is on the warehouseman to show who got it. These men I have referred to are employed in my Georgia warehouse. I can't say, to be accurate, how many men I [fol. 207] employ in a season in my Georgia warehouse; I would say approximately, common labor and all, maybe 100 men, maybe a few less or more. The salaries paid these various classes of employees varies from year to year. I have paid for an auctioneer as high as $2,200 for a Georgia season, and I have paid as low as $500. He is not employed on a commission basis, but on a straight salary. I hire mine by the season, so much for the Georgia season. I cannot say just exactly what the average price paid auctioneers from 1930 to the 1935 season was, but I would say it ran approximately $1,000 in the last four or five years, from $1,000 to $1,200. I have the salary list of every one of them. I use only one auctioneer during the season now; I have used two. Since 1932 we have only used one, on account of the smallness of the crop. I had just one in 1935. I think in 1930 I had two; I won't be positive, and maybe had two in 1931; I am not positive. The next highest paid man is the bookman on the floor; I have paid as high as $850 for the season and as low as $350 for the season. That was during the years 1930 to 1935, inclusive. I use two bookman on the floor; there's one relief man. And then the clip-man; I pay my clip-man the same I pay my bookman. The clip-man follows the sale behind the auctioneer with the bookman and each one of them figures the same pile at the same time in order not to make an error. Then the bookmen in the office. I hire them by the year, because they go with me from market to market, and I pay them $200 per month by the year. That's the office help, but when I didn't do that I used to have to pay them $500 to $600 for the season. That was for the period of 1930 to 1935, inclusive. It is hard to figure how many do work in a warehouse, you are sometimes liable to forget one, but that covers the big part. Then, of course, I have to hire extra help. I pay my floorman by the week; he gets $40 a week. He is the man who rides the [fol. 208] country and usually works two months at $40 a

week. All my men, traveling solicitors, draw from $30 to $40 a week and gasolene and oil paid by me. I furnish some of their cars; most of them furnish their own acrs. The skilled help I use and have described is not available from Georgia residents. They generally come from North Carolina, Virginia, Kentucky and sometimes Tennessee, sometimes Indiana and sometimes Ohio. I have one Georgia man that I have broken in an- learned. He is a resident of Georgia and lives there, but I trained him myself. He has been with me twelve years. He is H. B. Glisson, my head bookkeeper. We paid 18 cents an hour for all labor known as common labor this year, both black and white. Last year we paid 22½ cents. We were under the code last year and this year. I own my warehouse at Valdosta. I have a building there that I can say, I believe, is around 55,000 to 60,000 feet of floor space. I am not positive of the exact number. That is square feet. Then I have a building that joins that that I lease that operates in connection with this warehouse. There is about 18,000 feet in it. It is a tin building, built out of tin, very substantial floor. Has to be to carry the load on it. Two sets of scales, 70 trucks, 5,000 tobacco baskets. That is my main building. There are seventy trucks and two sets of Toledo scales in that building I own. I am speaking of tobacco trucks, floor trucks, regular equipment in the warehouse. Of course there is right much expense in repairing and keeping up those trucks. The life of a tobacco basket is usually about 10 years, and we have to buy every year. They get destroyed, broken and damaged and you have to throw them out and buy new ones. When I went there 12 years ago, I had to equip my house entirely and had to buy 5,000 new baskets this year. The building I own is a tin building; I own it. A tobacco warehouse has to have an extremely substantial floor in it, because of so much weight to carry, and you have [fol. 209] to have sky-lights. It is very expensive, the roof is, on account of having to have skylights in order to see the tobacco and grade it and sell it, and those lights are right expensive, and makes those buildings cost a great deal more money to build than ordinary buildings. The skylights are made of glass and wire. When I spoke of the building being tin, I meant galvanized iron; the sides are of that and the roof is the same. I didn't own the other building I mentioned; I leased it. The leased building was

of similar construction. I am familiar with the rental value of tobacco warehouses in Georgia. When I went there I leased this building I now own from the corporation that built it, and I paid them $1 a thousand for every thousand pounds of tobacco sold, and I furnished my own baskets, my own trucks, and I put in $6,000 worth of baskets, and had 70 trucks at $12.50 apiece. They furnished the scales which went with the building, but the baskets delivered then were $1 apiece, and cost me $6,000 for just the baskets that went in the warehouse, and $12.50, I think, was the price for the 70 trucks. I paid them $1 per thousand pounds for all of the tobacco I sold in that building on what is known as firsthand sales. I used to pay the corporation a rental of around $5,000 per season. In other words, if I sold 5,000,000, I had to pay $5,000. I have sold during that time as high as 6,200,000 pounds of tobacco and paid them as high as $6,250.00. When the tobacco crops dropped, the acreage dropped and tonnage dropped. I have sold as little, since I owned it, as 800,000 and some odd pounds of tobacco, per season. I will give the figures now; I just got them from Lindsey, the State man, or whatever his name is. In those big years, 1926, 1927 and 1928, when the State sold 100,000,000 pounds, I sold 6,000,000 of it, and then the crops dropped back. In 1930, firsthand sales in this house was 4,953,126 pounds. In 1931, in the same house, I sold 2,888,736 pounds. In 1932, I sold 860,033 pounds, and of course I owned the house at that time, but back when I was renting [fol. 210] it, I paid $1 per thousand rent. So in 1930 it was practically $5,000 in rent. In 1931 it was $2,888; in 1932 it would have been $860. In 1934 I sold 2,925,728 pounds. In 1934 1,849,970 pounds, and in 1935 I sold 3,033,998 pounds; that's the firsthand sales. During part of that period I owned the warehouse; I have owned it since 1928, maybe 1929. The charge of $1 per thousand pounds is a mighty cheap charge for leasing a warehouse. In other words, they usually get $1.50; I have known them to pay as high as $1.50, in North Carolina, and I have known them to pay that high in Georgia a good many times. I have operated a good many houses years ago besides Valdosta. Now the average run is never under $1.00 and usually runs from $1 to $1.50 when it is equipped. I bought in 1928 or 1929; I paid $33,000.00 for the warehouse. It cost $35,000.00 and I paid $33,000.00 for it. In the equipment of

a warehouse, there are sheets. We don't have to buy them, but we do it. We buy them and lend them to the farmers. This year they cost 20 to 21 cents apiece. They are a cotton sheet used for picking cotton in and you tie up tobacco in it and bring it to town to sell. This year I bought around $600 worth of sheets, and loaned them to the farmers to haul their tobacco to town in. I would estimate that I got back maybe $200 worth of those sheets. I don't know that that is necessary to the successful conduct of a warehouse in Georgia, but we have to do it because they have no sheets and no way to get it there, and we do it in order to save them buying sheets and to try to help them. It helps your business, because you get more tobacco. The tobacco is dumped into a sheet and brought to the warehouse and dumped out of the sheet into a basket and packed around. The farmer does the packing around when he picks and packs it in the sheet; he puts it in a round circle on a sheet, a cotton sheet, and it is brought to the [fol. 211] warehouse, set off on the floor, and the warehouseman unties it, puts a basket on top of the pile and dumps it by turning it over, then takes the sheet off, and the tobacco is left in a round pile on the basket. It is then taken up by the warehouse hands, carried to the scales, weighed and carried then to the floor and put on the floor. After the tobacco pile is on the floor, one of my men goes ahead of the auctioneer and pulls handsful of the tobacco out to see if it is fairly uniform all the way and is of the same grade, and then he will start that pile of tobacco, probably he will say 20 cents, and by that time they have just finished the sale of the pile before it, and the auctioneer comes on and cries the bid of 20 cents. If some one says I will give 20, the bidding goes on. If he does not, I will say I will stand 20 cents as the warehouseman. Very often the buyer is trying to see if he can't pull it back cheaper, but when he finds that I have got nerve enough, that I am going to pay my money, put my money behind my brains and give 20 for it, he will say I will take it, and maybe start the bidding and run it up to 23 or 24 cents; and then I keep bidding on thep ile until I think I have run it as high as possible to get for that pile of tobacco. The buyers there are figuring their brains against you. And they will lead you up on one pile and let you have it where they figure it has sold above the market, and sometimes they have done just that. It is very often true. Then you

have got to pull it out and sell it. So I am just pitting my brains against every man's on that sale. If 10 are buying and I am watching the sale, I have to watch every one of them, else the farmer is not getting any protection. The farmer's only protection in the world is the warehouseman to back up his judgment as to the value of his tobacco, against the companies. That's his whole protection and all that he has gotten. In making a sale, the warehouseman makes the first bid always. Sometimes there are 10, [fol. 212] 12 or maybe 14 buyers; usually from 8 to 10, not less than 8. If I start a pile of tobacco and can't get 20 cents and they say it is not worth 20 cents, and I think it is not, I will say 18 cents, but if you hadn't a warehouseman there or a man that doesn't know his business, then the pile of tobacco so far as the farmer is concerned could go back to 6 cents, because the buyers' instructions are to buy against his competitors and unless the warehouseman was there, the farmer would have no protection. The warehouseman can withdraw the first bid; a bidder can withdraw, any man can withdraw a bid if he sees the tobacco is not what it is represented to be. The farmer had the right to withdraw his tobacco from a sale; he has 15 minutes to tear or turn the ticket, and it has not cost him a penny to sell it in the State of Georgia. He can turn the ticket and take it and put it on another part of the floor and sell it again, or he can take it and carry it home without a penny's cost. He can take it to another warehouse if he wants to. He can leave it on my floor for five sales with not one penny's more cost. He is not charged any storage if it is left there for five sales; we are responsible and carry insurance to cover it, and until he takes it out of our building we are responsible for it. In 1934 the warehouse charges in Georgia were the same that they have been ever since I have been running a tobacco warehouse in Georgia. I can't say what the scale of charges I charged the farmer for this service was; My bookkeeper can tell that, and also Mr. Smith probably can. I never worked in the office; I am out on the floor. I don't know what the State of North Carolina or any of the other States charge. I employ men to take the ticket from the bookman or clipmen to the office of the warehouse. We call them the bill carriers. He takes the bills when you finish a farmer's sale of 10 piles or 20 piles, whatever it may be, and that man's tobacco is completely sold, and we have a man that

[fol. 213] takes that bill and carries it to the office to the pay-off man, to the cashier, and delivers it to him. We used to let the farmers carry them, but we found that was bad, for some of them would try to make us pay for it twice, and to guard against that we hire a man to do it now.

The cashier is not a different man from the bookkeeper. The head bookkeeper or cashier is the same. Then we have to furnish additional men there. We term them ordinary laborers in straightening those tickets for the bookkeeper to figure. He comes along and straightens the ticket up on the top of the pile of tobacco, so the book and clip men can read it and figure it, for they don't have time to stop and pick up those tickets; so they can read it. Then we have a man in front who passes the tickets back to me and I pass it to the ticket marker as the sales are made. If a farmer turns the ticket on a sale, that means he will not sell at that price; he can do that within 15 minutes and that gives him the privilege of moving his lot to another place for that same sale, if he wants to. If he turns a ticket, we will furnish him a man or two men to go take up the piles of tobacco and put it somewhere else or put a new ticket on it, and offer it again sometimes. I have sold one pile 10 times, and have what we call running it around where a farmer was trying to see if he could get any more money. There are no extra charges for that service. A man operating a warehouse has to be a man with years of training, and he has got to know all the grades of tobacco in order to compete with the companies in helping get the high price for it for the farmer, and it takes years of training for that. No ordinary man can walk in a warehouse and take it and run it. When you have $70,000 to $100,000 of your money at stake, and every time you open your mouth you are liable to spend $100 of it, you had better know what you are doing. You have to be able to judge tobacco and [fol. 214] know whether a pile is worth fifty cents per pound or whether it is worth 5 cents per pound, and it takes a lot of training. You have to know those things, or else you will lose all you have when you are running a tobacco sale. It took me quite a good time; I ran a warehouse 8 to 10 years, and I thought I knew how when I started, but I had not learned "B". It took me five or six years. I had been buying tobacco before I got where I could run a sale like it should be run, and it took me five or six years; and it requires a lot of money to operate those sales. I paid out

as high as $109,000 in one day this year; that gives an idea about what is involved. That amount, $109,000, was issued by me in checks to the farmers. You just can't pick up anybody to be a warehouseman; if he really does his duties in his place he has got to be experienced, and those men are when they work on sales. They draw good salaries, because the average man would not be able to run a warehouse. If somebody owns a warehouse and can't run it, he has to pay a man an average price between $3,000 to $3,500 to take the responsibility of the purchases he makes, and if he lost much, he would not make much then. I know the average salaries paid to individuals to take charge of and run a sale; I have hired men and have paid as high as $2,500 to $3,000 myself. When I paid those salaries, the man I employed was responsible for the purchases in the leaf account; when I am responsible, I pay lower salaries. I paid $33,000 for my warehouse. I have bought new baskets for that warehouse this year, 4,850 baskets at a cost of 50 cents apiece this year. In my equipment I have to have automobiles. I usually wear out one automobile, and practically wear out two sometimes in one year in the interest of my warehouse. I have to re-work my scales, have to go over them every year. We have to replace our baskets, and of course with me there is included in my expenses my taxes and insurance on the building and things like that. I keep [fol. 215] two trucks and two automobiles which are devoted to this business, and then I have to replace baskets, keep up scales and keep the stock up on 5,000 baskets approximately. I would say that in addition to the investment in the building, the equipment used in the warehouse costs me probably $1,500 a season. The value on the baskets would be 50 cents apiece, about $3,000 on baskets; the value of the trucks would be $15 apiece, and I have 70; the value of the automobiles, one car cost $1,000 and one cost $800, and then I have two trucks; I would say the value of the trucks is one probably $699 and one at $800. I would say I have invested in equipment for each year during the years 1930 to 1935, inclusive, around $4,000 or $5,000. I used a capital of $70,000 this year in operating the warehouse. I borrowed $70,000 to put in the bank to pay the farmers for their tobacco. We do not get our money, some of it, until from 3 to 5 days or a week afterwards. I paid out $109,000 in one day. That is arranged in this way: A good many of those checks the farmers take them home after I sell their tobacco. The

farmers will carry the check home and deposit it in their local bank. My books show at that time I was probably $35,000 overdrawn, sometimes $50,000, but the farmers carry the checks home and deposit them in their banks, and it takes several days for a percentage of them to get back to my bank, but I actually used $70,000 in paying off the sale. Then there is another way. You take the stamps, we have to buy stamps, and we have some money tied up in them. We get them from the Government, and you can't run up there and buy them as you make sales, 1, 2, 3 and 4 at the time. You have to buy $5,000 worth, and I have used as high as $5,000 worth in one day. We have to put our money in them for the Government. I used $70,000 borrowed money. I have a list here showing the exact amount for the period of five years, what I used every year, I have [fol. 216] it here in the ledger. If it was not for floating checks like that, I would have to have $150,000 in cash, and we never know what time the bank might call us and say you must come up and put up $10,000 or $5,000. If my account is overdrawn at the bank, I pay them 8 per cent on every check I cash over that, but I don't do that. I furnish the money and put up the cash. It is customary with the banks in the tobacco section to lend warehousemen so much money at 8 per cent, and then if any more checks come in they charge 8 per cent on the overdraft as interest. There are other banking charges against warehouses in Georgia; the banks in Georgia charge ¼ of 1 per cent. on every check that passes through the bank. The State of Georgia does that, or I mean the banks of the State of Georgia. That is what they have been charging. They charge me that when I put up my own money. Some of the warehousemen borrow some money from the local banks, I understand. I borrow my money but borrow it from an individual and pay him 8 per cent interest on it. I have made up a statement reflecting my operations from 1930 to 1935, inclusive, as a tobacco warehouseman in Georgia. It contains every item: gasolene, oil, repairs, telephone, water, lights, insurance, interest and discounts at the bank which they charged me up for the year 1930 and including 1935, and the sales are listed for each year, each man's sales, what he received that year for his services and what his business was. Just the exchange I paid the bank on my business this year was $1,605.15. Refreshing my memory from the statement I have before me and additional knowl-

edge I have, I will state that the amounts I have just stated are correct. That represents ¼ of 1 per cent charged by the banks in Georgia and which the bank made against my account; that is for the year 1935. Similar charges were made every year previous to that. I have made up a state-
[fol. 217] ment of my operations for the years 1930 to 1935, inclusive, reflecting the income and expense of my warehouse business in Georgia, and also showing my net profits and losses. That is the statement now before me. The gross earnings, expenses, profits and losses for those years are each given separately here for each year. This is a copy from the books. I have my books here; I just made this statement in this form so you could understand it better probably. I am familiar with my books; the entries made in my books are under my supervision. In the year 1930, I think I made a small profit, I don't recall the exact dollars and cents, but I think it was a profit. I have made some money by my operations in Georgia for the last 12 years, so far as this one warehouse is concerned, not counting any salary or anything for myself. There is no salary whatever in my expenses, not a bit, and no drawing account whatever. There is nothing on my books as reimbursement for my time, skill and experience. My bookkeeper is here and has the original books from which this statement is made. I am familiar with the warehouse charges prevailing in the State of North Carolina. They are less than those in Georgia. I am familiar with the amount of tobacco sold in the State of Georgia and sold in the State of North Carolina. It varies in both States. In North Carolina in the bright belt, it has made as high as 600,000,000 pounds, and I don't think they have ever been under 400,000,000 pounds. Georgia's highest, I believe, is 106,000,000 pounds, and the lowest was between 11,000,000 and 12,000,000, I think, in the last twelve years that I have been in business. The highest was either 104,000,000 or 106,000,000. The charges in North Carolina were lower than in Georgia; I refer to the charges in Georgia we used before this season, the ones used by the warehousemen rather than the ones passed by the legislature now under attack in this case. I don't know that I
[fol. 218] have made any comparisons of the North Carolina charges with the Georgia charges on the typical pile of tobacco. There are some piles in it though that don't

figure but very little difference and some larger ones that will figure a good deal different. It is more expensive to run a tobacco warehouse in Georgia than in North Carolina. That is on account of your labor expenses. When we go to North Carolina our help are there and much cheaper, because we can give them 2½ to 3 months work, and it doesn't cost us near as much. We pay our men there by the week and in Georgia we have to pay them by the season. Last year, just for a comparison, I sold 1,800,000 pounds in Valdosta, and nearly 3,000,000 pounds in Aberdeen, and because of my expenses I made less profits in Georgia. I made more profit in North Carolina than in Georgia, operating over a period of 2½ to 3 months. These men we employe have in South Carolina and North Carolina a 3 to 4 months market, but when they go to Georgia, it is to a three to four weeks job. The South Carolina market begins soon after Georgia's, so those men have to get something equal to the South Carolina job, and we have to pay him off that way when he comes to Georgia. In Aberdeen, N. C., I pay ⅛ of one per cent banking charges, and in Asheville, I pay ⅛ of 1 per cent, where in Georgia I pay ¼ of 1 per cent. In North Carolina I pay six per cent on what money I borrow in that State, and in Georgia I pay 8 per cent. The fact that the Georgia tobacco selling season is short causes me additional expense. It costs us quite a bit of additional expense because it is sold in such a rush you just have to hire so much additional help to handle it. We could operate two months in Georgia for less than we operate 14 days; they double it up and double up the expense. I guess it is the grower's fault that Georgia doesn't have a longer selling season. This year I represented the State of [fol. 219] Georgia at the United States Tobacco Association, in White Sulphur Springs, W. Va., and we asked for a longer selling season. The companies said we could have as long a selling season as we wanted, but the farmers rush it into the warehouses. The growers will rush it in. If they would wait there is no limit to keeping the warehouse open. We could keep them open as long as there is tobacco there to sell, but when the market opens the farmers rush it in like that was the last day, and they pile it there on us in that way until it is sold. And of course when it is sold, there is no use staying there and we close up and have to leave. It is the farmer's fault as I see it. I used two shifts of employees in Georgia; that was because of the short

season in Georgia. We don't anywhere else. I never use but one shift anywhere else, but have to use it there on account of the growers bringing tobacco in at night all night. We don't have a night shift in North Carolina, just a watchman.

Cross-examination:

In the statement I have testified about, it shows that during the year 1934 my total income was $17,000 and some odd dollars. I made statements to the Department of Agriculture, of Georgia; I had to do that every week. The report of the Department of Agriculture, showing that B. B. Saunders Warehouse, Valdosta, Ga., received in 1934 $25,352.71, has reference to what the tobacco brought. The statement from my books showing that in 1934 my total income was $17,000 has reference to what I earned gross. That has nothing to do with what the tobacco brought. That's my gross income before any expenses are deducted. That $17,000 represents only the amount that was received from tobacco sales sold on the floor of the warehouse in the regular business of the warehouse for the year 1934. When I bought tobacco because the price that the companies or buyers were offering was not sufficient to protect our [fol. 220] customers, we always sold it. I am speaking of the tobacco left on my hands, called house tobacco. That day or the next day, I tried to sell that tobacco, and did eventually sell it. If there was any profit, I got it, and if there were any losses, I got that too. I lost money on my leaf tobacco, taking in the sweepings; that's all leaf, I work it together. We have what we call sweepings, that's all leaf. That is the tobacco which is wasted and which is on the floor of my warehouse after a sale. In Georgia they put tobacco in baskets loose and not bound together; it is sold loose. There is very little dropped on the floor in moving it from place to place and during a sale; our hands pick it up and place it back on the basket, and from the waste the farmer doesn't lose anything. After the companies have gotten up the tobacco at the end of the day, there is some tobacco scattered on the floor. After the companies take off their tobacco and the floor is cleared, there are some scraps and sweepings left on the floor. We push it in a pile, pick out a few of the best leaves and the balance is pushed up into a pile into what we call scrap. We sell that; my sweepings and house tobacco all go to-

gether. The leaf account altogether sold for $850.00 this year. I can't say how much the sweepings brought. I haven't any idea how much I got for the sweepings, but I can look up the whole total. Mr. Glisson can give that. One reason that the season costs more in Georgia than in North Carolina is because the farmers rush their tobacco in and sell it in less than a month. The season this year lasted a little over three weeks. This year we started on Thursday, the first day of August, and we closed on the 21st, I believe, on Wednesday. The North Carolina market will open next Tuesday, the one I operate on. There are other North Carolina markets besides the market I operate on; they open in three different belts. The first this year opened on the 8th day of August, a week following Georgia. The one I mentioned is included with the [fol. 221] South Carolina belt. There are about 8 or 9 markets in the State of North Carolina that opens in what is known as the Southern or South Carolina belt. That is Lumberton and some other markets down there close to the border, and they are called border markets and open when South Carolina does. The next belt is known as the Eastern North Carolina belt. That opens the 26th of September, I mean August. The one I will open, which is the next one, will open on the 17th day of September. That is not up in the mountains, it is right here (Raleigh, N. C.). The market I operate at Asheville is not with these, that's burley and goes with Kentucky. My Aberdeen warehouse is in this belt right here, known as the Middle Belt. That opens on the 17th day of September. Now the next belt, there are four markets in North Carolina. The old belt, Danville, Winston Salem and in there, that will open on October 1st, this year. I am running a warehouse at Aberdeen this year. I don't operate anywhere else in this belt in North Carolina, except when I go to burley; then I operate in Asheville. If it were not for the fact that the farmers in Georgia rush their tobacco in and sell it in Georgia quickly, we could operate 2½ months there, if they would take the time. That would not necessarily exclude me from the North Carolina market up to that time or exclude me entirely from South Carolina. I could go to the old belt on October 1st. It would exclude me from the other belts. If we continued to operate 2½ months in Georgia, we could not go to South Carolina, but we do

not go there anyway. The South Carolina season opened August 8th this year. It was one week later than the Georgia season*ed* opened this year. Sometimes they run up into October; some of the markets close tomorrow. Altogether, it will run longer than 2 months. The big markets stay open longer, and the little markets sell out and close. The Georgia and South Carolina markets do not conflict, altogether. [fol. 222] You could go to Georgia and operate a week and then come to South Carolina. Of course, you don't want to do that. And then you could operate warehouses in both States. You couldn't operate it with the same force in running the two warehouses, and then you are not running it yourself. I don't operate anywhere except when I can operate myself. I can't say whether that is true with reference to all warehousemen or not. Georgia warehousemen operating in Georgia can't also operate in South Carolina, because they can't operate two sales at one time. They could have another man to operate the warehouse for them in one of those States at the same time, but one man can't operate both. I think some warehousemen have markets over the various States, 1 or 2 or 3. If there are any Georgia warehousemen operating in South Carolina, I don't know it. They probably don't because they don't want to. It may be that they can't get the markets, maybe they are all taken. Not all of the warehousemen that operate in Georgia operate in North Carolina. I can't say what percentage of them do. I don't know practically all of the warehousemen in Georgia; I know some of them and some of them I don't. There is not a big per cent of those I know who operate in Georgia and in North Carolina; I don't know how many there are. We do not do the rushing through sales in Georgia; the farmers rush it on us. We can't control that. We don't announce that the market is going to open on a certain day and going to close on a certain day. We didn't announce this year that it was going to close on the 21st before the market opened. We announced that the market would close on the 21st, three days before the closing when the tobacco was sold. I did not sell 100,000 pounds after we had announced it. You take the Florida markets, except Live Oak, Fla., is usually earlier, the crops are out earlier and marketed earlier than we do. Then you take that belt up at Vidalia and States-[fol. 223] boro, we sell out earlier than they do. I think the middle Georgia markets this year run a week and a-half

after Valdosta closed. All we do is to tell them when we will close. We handle the tobacco until it quits coming in by just a load or two a day.

Then we call a meeting and ask the farmers all over the country to say if it is not about time to close. Then we say we will close by a certain day. Usually on the last two days, we handle four or five little rows of tobacco, and it takes perhaps thirty minutes. Every market in every town has their privilege of setting their closing day. I have been in the tobacco warehouse business 22 years. I first started at Raford, N. C., in 1914. I had a warehouse there. I only run one in Raford two years, and went to Aberdeen and ran there in North Carolina until I went to Georgia, and I still operate in both places. We have bad years in North Carolina, years of low prices for tobacco, which effect what a warehouseman makes. The market in North Carolina has always lasted two or three months. They have never rushed in like Georgia, because they have to grade and tie their tobacco, and it takes them much longer to market it. It takes a farmer about ½ day to pull down and pack a barn of tobacco for the market in Georgia. In North Carolina it takes an average family one day to grade and tie one barn of tobacco and prepare it for market, where the Georgia farmer can take it down and haul it in in about ½ day. The amount of tobacco raised and sold in North Carolina is more than four times the amount raised and sold in Georgia. The figures I gave will approximate that. It might take four times as long to market four times as much tobacco; if they had to grade and tie their tobacco first, then it would take a longer period to sell it. My warehouse in North Carolina, which I operate for three months, does not handle as much tobacco per day as my warehouse in Georgia. I had eight sales in Georgia and sold 3,033,000 pounds of tobacco firsthand sales, and [fol. 224] sold it in eight days, and in North Carolina it takes 2½ months to sell that. I don't handle a great deal more tobacco in North Carolina, but other warehouses handle 15,000,000 pounds. There are a great deal more warehouses in North Carolina than in Georgia. You can't control the preparation of tobacco for the market and when it is marketed in North Carolina. If they handle in North Carolina 500,000,000 pounds in three months, and 100,000,000 pounds in one month, which is the highwater mark in Georgia, our warehouse wouldn't handle the same amount

every day in Georgia that it does in North Carolina. We might have four times as many warehouses up there as we have in Georgia, taking all the warehouses as a whole. I know there are more, but I don't know what per cent. It is not true that the difference between Georgia and North Carolina is that in North Carolina we have very big markets and they handle large quantities of tobacco, and in Georgia we have a number of little ones. It is true that there are markets in North Carolina that sell a larger amount of tobacco than several Georgia markets together, just like in Georgia you have large markets that sell large amounts and others that sell small. Aberdeen has a population of 1,000, I should say. It has two warehouses, I should say; just like Hahira is small in Georgia. There are three warehouses in Hahira. I can't ascertain definitely how many more warehouses there are in North Carolina than in Georgia. I know there are more in North Carolina than there are in Georgia; I think a great deal more, but I am not positive. I know very little about the South Carolina situation. I think there is a little variation in the warehouse charges, the auctioneer's fees, the weighing and handling of tobacco and the commission on gross sales in South Carolina and in North Carolina. There is no law in South Carolina, and I am positive South Carolina is a little higher. I am certain about the law in South Carolina. I am [fol. 225] not speaking with authority when I say there is no law there. I can't say whether the warehouse charges for North Carolina are the same as those fixed by law in Georgia, or not. I don't know what the auctioneer's fees are. If the legal charges in North Carolina are the same they are in Georgia, I don't know how long they have been the same in North Carolina that they are now. There has been no change in them since I have been operating in North Carolina that I know of. The charges they used to use in North Carolina are the same as the charges they used in South Carolina when South Carolina sold tobacco loose. Then they passed a law requiring tobacco sold in South Carolina to be graded and tied, and after that they made a different charge, I understand. I can't say whether there are no scraps or sweepings in South Carolina, or not. You have pick up tobacco on all markets. We have floor leaf in North Carolina the same as we do in Georgia, or sweepings, but not as big per cent. The tobacco sold in North Carolina is tied up in bundles. It is a lots more trouble

to handle it loose. It is a benefit to the warehouseman and the farmer and all to handle it tied in bundles; I would consider it an advantage to all concerned. The buyer doesn't handle it a great deal easier if it is tied than if it is loose. After tobacco is on the floor in Georgia, I can handle it much easier, and the buyer can, because he can take it over and dump it on the floor and loads it in a car or truck, and sends it on in. In North Carolina they haul the tobacco to their storage house, pack it in hogsheads and ship it. Some of them will sheet it and carry it to the factory in sheeting. The tobacco sold in loose leaf form, a lot of it, is loaded straight to the machine, trucks, and in the cars and goes on in to the manufacturer, and the manufacturer gets it that way. The warehouseman doesn't have anything to do with that at all, the buyers do it for the [fol. 226] companies. When operating in Georgia, I bring my clip-men, bookmen, two bookmen, ticket marker, weigher, 1 weigher, from North Carolina. The other man, as I stated, I carry with me the year round. I also have to bring the auctioneer there. I bring only about five employees there from North Carolina. I carry two of them around with me wherever I go. The other is common labor, cheap labor. I bring my assistant from North Carolina. The common labor I need, the common help, comes from Georgia. Mr. Glisson is from Georgia, and he has been with me for years. I trained him and he goes all around with me. It is not my business to train men from Georgia for that work; it is not my business to go out and train them. I go out and teach the farmers how to handle tobacco; it is to the interest of the farmers. I have one man I trained in Georgia, but I might train some of the other men and then somebody else would offer them more money and he would leave me. That isn't true in North Carolina; there are trained men up there already, and that's there. It is their business; they make it their business. I don't think it is dangerous to train men in my business in Georgia, because somebody else might hire them, but it is possible somebody else might hire him, and there are plenty of them trained. I am not a grower myself now. It has been some three or four years since I farmed myself. I finance some growers. I don't have a great many farmers to raise tobacco and finance them; I assist them in the financing. The interest I have in the tobacco is according to what I do for

them. I have to make a contract with each one of them, and I get a certain percentage of what the tobacco brings when I do that. That is not the part I work for when I go around and help the farmers; I have men hired to do that work. The eight field men I have mentioned, do not go around among the farmers growing tobacco and make contracts with them to finance them. I have separate men [fol. 227] hired in the localities where the tobacco is grown, men to act as fieldmen and instruct the farmers and solicit tobacco for my warehouse. I have one fellow Fowler at High Springs, Fla., Leroy White at Alachua, Florida, A. C. White, Alachua, Fla., and I have my brother at Mayo, Florida, that gets or grows some tobacco there. I did not say my field men went around and helped the farmers and taught them; I said my solicitors. They go out and solicit tobacco for my warehouse, and they then hold a job in my warehouse and work during the selling season. I just named some of the men I hire to go around and help the farmers. They grow tobacco. What I do myself, I don't make any charge for it. These men in these localities go out and get up acreage and tobacco, and they advise the farmers, and I go out myself sometimes with the demonstrators, and I help them. Then I help finance them. They used to have a lot of demonstrators; the farmers paid them. They don't have so many now. Sometimes I trade with the farmers and the demonstrators on the basis that the demonstrator will give me a certain amount of what he earns to finance the farmers. I have my salary account itemized for the year 1935. J. A. Campbell is door man. O. L. Carter is one of the driveway men; E. R. Horne is bookkeeper, William Maurer is a weigher, E. L. Moore is one of the floor men, P. L. Patman a weigher, William Sewell is house floorman, J. G. Slaughter a ticket marker. Sadie Sutton helps pay off, she is a lady and is assistant cashier. Veasy is a driveway man, Walter Mills is bookman on the floor, Paul Stokes is clip-man, S. H. Stewart is assistant sales runner, J. J. Maury is one of the floor hands. Will Wisenbaker is one of the solicitors; he is the son of the county commissioner here. I don't have any solicitors that I hire for their influence over the farmers to cause them to bring their tobacco to my warehouse, alone; I hire them to do some work too. I [fol. 228] hire them principally for their influence over the farmers in order to get tobacco brought into my ware-

house, and to help during the selling season. Will Wise worked something like two months at $140.00. Paul Stokes and S. H. Stewart worked just during the selling season for $300 each; that was three weeks. Stokes was a clipman and Stewart assistant. Mills was bookkeeper. Stokes and Mills worked for me last year; Mr. Stewart did not.

I don't know what I paid Stokes and Mills last year; their salary is on that statement. I think it was $50 a week, and I paid them $75 this year, because there was more tobacco. I didn't pay all of them more this year; don't know whether I paid the majority of them more or not, not all of them. I don't recall how my expense account this year compared with last year's; they are all down there. I know I sold a great deal more tobacco, nearly double, and it takes more expenses. I still say that I can operate in North Carolina 2½ months and sell a lot more tobacco, at less expense that you can in Georgia for three weeks. I have the books to show it. F. E. Boone is an auctioneer; I gave him $600 for three weeks. I think he came from Kentucky. He wasn't with me last year. My auctioneer last year was Jack Rogers. I paid him $600 last year, I think; I am not positive. I guess the salary account shown on that statement, $5,846.77 for 1935, and $4,068.88 for 1934, is correct. The $1,800.00 difference is because I sold more tobacco and had to have more help to handle it. That paper shows that I sold 1,800,000 pounds last year and sold 3,033,000 pounds this year. That is the per cent. I don't count it as about twice as much. I sold 1,800,000 last year and 3,033,800 this year, about 1,200,000 difference. Twice 1,800,000 would be 3,600,000. I dont sell or rent one penny of concessions in my warehouse, in addition to the items referred to. I have a restaurant in the end of my warehouse, and I have never gotten one penny [fol. 229] out of it. I may go up there and drink a coca cola and eat a sandwich, but I never do rent it or get anything out of it. I don't operate it myself, I just give it to somebody to operate. I never have operated it, never gotten a penny out of it. I give it to a man as an accommodation and so I will be fixed for having a place for the farmers to get something to eat and drink. I imagine it is true that every successful business man has to have experience in his line, just as well as a man who operates a warehouse business. You might have all kinds of technical knowledge of tobacco and prices and of the handling of tobacco, and they might put you down in a good little business in the State of Geor-

gia and you would lose, just like if you are a good lawyer and know the law in the State of Georgia, you might go into it and lose. What applies to the tobacco warehouseman and the lawyer is the same; they must both have skill and experience and get business. It takes experience to run them both. It isn't a job to take a bookkeeping course and then you know how to do it. We don't attempt to grade the tobacco in my warehouse; we try to show the farmers how to do that, to show him the green, the dead and the burned tobacco, so he can separate it and we try to get him to separate it. The farmers attempt to grade it and put the best tobacco in one pile, and when they bring it into my warehouse we spread it just as they have graded it. After the day's work is done in a normal day, the tobacco is left in the baskets and they have tickets on the piles showing who bought the tobacco, and the purchasers pick them up and move it; each company moves its own tobacco off the floor. After it is sold, we don't have any other expense; then it is the other man's property. All I have to do then is watch and see that I get a coupon off each pile so I will know he gets what he bought. I don't have anything to do about getting the tobacco up off the floor, except what I have bought myself. I stated that in five years [fol. 230] I had a profit; I can't say from my own knowledge what the profit was; I haven't even figured it. That has reference to Georgia operations. Some years I made a little money in North Carolina and some years I lost. I lost a good many years in Georgia heavy, which will show there. I suppose some sections of Georgia began growing tobacco 12 or 15 or more years ago, but some of the men who went there before I did will have to state when the growing commenced. They have been growing tobacco at Valdosta and in that section around there a number of years, especially 12 or 13 or 15 miles north of there. There was a little warehouse in Valdosta when I went there, out on River Street, known as the Farmers Warehouse, but I don't know how long it had been built or anything about it. When I first went there the warehouse charges were the same as they are now, and have always been the same so far as I know, no changes that I have ever known of. The Warehousemen's Association never passed any resolution fixing the warehouse charges in Georgia that I know of. They were using the South Carolina charges the same as they did last year, and they were using them when I first went there so far

as I know. The warehousemen haven't maintained the same charges by agreement. I imagine it is like this: if one man was selling tobacco on one corner and another man was selling it on another corner, and one man charged more than the other, naturally the man who charged the least would be getting the tobacco, and if you charged more, you would be discriminating against your customers more so than some other man who was doing the same kind of work. The warehouses have not reduced the charges in order to get the business, that I know of; I never reduced any. So far as I am concerned, I am using the same charges and have been for 12 years, and so far as I know the others have. If there has been any change, I don't know it. I was never at a meeting of the Warehouse Association at which a resolution was passed fixing the charges, and can't say that [fol. 231] they did pass one. Mr. Fred Brown is President of the tobacco warehouse association. He operates at Nashville, Ga., and lives at Danville, Va. I think Mr. Goodman, of Tifton, is Secretary of the association. He lives at Tifton and works for somebody there. I don't know how long he has been secretary of the association, several years though. I don't recall when the tobacco warehouse association was organized in Georgia; don't know whether it was organized before I came to Georgia, or not. I have been a member of it a long time, but am not positive whether it was organized when I went there or not. I have attended the meetings of the association regularly. I think they have bylaws. While I was leasing the warehouse I now own, I made money some years as a warehouseman and some years I lost. I paid rent from $3,000 to $5,000 a year, and maybe lower. I don't have to pay that now, I own the warehouse. Since I am operating my own warehouse, I make a very small amount. When I was renting, we were selling from 80,000,000 to 100,000,000 pounds in Georgia, and I was selling probably 5,000,000 to 6,000,000 pounds in this house I am now running. Now I am selling from 800,000 to 3,000,000. I sold from five million to six million in that house for about three or four years, I think in 1926, 1927, 1928 and 1929, it was. I didn't sell during the years I have mentioned from three to five million pounds; I said those were the years I sold the big amounts of tobacco. The state was selling more tobacco when I was leasing the house, and since I bought the house I have not had a big poundage,

except 1930. The tonnage that house has sold each year from 1930 on is in one of the papers I left in that bunch awhile ago. For 1930 that house sold 4,943,000 pounds of tobacco. I owned it then. In 1931, 2,881,000; 1932, 860,000; 1933, 2,925,000, and in 1934, 1,849,000 pounds. This year, 1935, that house sold 3,033,000 pounds. I am giving these figures from the department. I wrote them because [fol. 232] I had lost a list that had some of the figures on it last year's, and then maybe I had this year's and lost it. Anyway, I wrote them and got that this morning from Atlanta. My highest sales were in the year 1930. That was 4,953,000 pounds. I sold in 1927, five million, then I sold 4½ million, five million, six million and 6¼ million. I have sold as high as 6¼ million through that one house. During the 12 years I have been in Georgia operating a warehouse, I have been able to buy a warehouse that cost me $33,000, and was able to operate my warehouse during that period and I still own it. I bought the warehouse and paid $33,000 for it with 20 years to pay for it. I think that gentleman over there has some interest in it. I had 20 years to pay for it in and failed a number of years to meet my payments, and I have had to take the best years to catch that up, but I am up now even with my payments. The best years we have had has been the last three years. Most businesses now seem to be doing better than after the depression. The baskets I used down there lasted me 11 years; I had to put in some new ones this time. The originals cost me $6,000, 6,000 baskets and they cost me $1 apiece. The ones I put in last cost me 50 cents apiece. I bought 4,850. By past experience they ought to last me 10 or 11 years provided they are taken care of. I can't say whether rent for warehouses is lower or higher in North Carolina than it is in Georgia. I have never rented a warehouse in North Carolina but three years in all of my operations. Taking the warehouse I rented, I sold 2½ to 3 million pounds in it during a three month's season, and paid as high as $2,500 and paid as low as $1,200 rent. That was when we had a short crop in that section. Of course when you fail in crops, that will determine what your rents will cost. During the year 1935, I had other solicitors besides [fol. 233] Will Wisenbaker. They are listed there on that statement. W. P. Hodges was a weigher; Turk was assistant floor manager at night; Ganas was a floor manager;

Stahern was a driveway man at night; Lewis was shot and gateman; Will Carter was a day floorman. L. S. Roberts was one man who rode the country and helped on the driveway in the day time.

I called him a solicitor, all who rode the country were solicitors. Boone was auctioneer. Frank Carter was the fellow who carried the bills from the bookkeeper to the pay-off man. I don't remember George Williams. Ward Prime worked for me on the floor. Mr. Glisson was assistant in the office. Jack Rogers didn't work for me in 1935. H. A. Swindle was a common laborer. Those I paid $25.00 each are common laborers. Moore and B. E. Carter were both solicitors, L. S. Roberts was a solicitor and Campbell was a solicitor. All those men were solicitors in the country and held jobs in the warehouse too. I paid Campbell $201; that was for three months as solicitor. He devoted his entire time to it. He is not a farmer, he lives in Valdosta, Ga., and used to have charge of the Alliance Warehouse, and I hired him as a solicitor to ride the country and to work at the warehouse. You see the solicitors work at the warehouse when the selling season is on, and he worked on the drive to keep the traffic from jamming. Will Wisenbaker worked on the driveway, helped stack tobacco, tagged tobacco in the warehouse; that's what he did. When we were rushed, I had to hire extra men just for a week or maybe 10 days to do that work that was competent. I don't know anything about the South Carolina warehouse business. I hauled my tobacco which I bought and stored it, and in hauling it out and storing it, I used my trucks. That business goes to the house, the leaf account. The house belongs to me. That warehouse and the business belongs to me as my individual business. The two trucks I had had something to do with the operation of the warehouse. I [fol. 234] bought tobacco and moved it and used my own trucks in preference to renting trucks. I moved my tobacco to the building I rented, off my floor. That was tobacco I bought myself. This season I borrowed $70,000 for operating expenses, and that was at the beginning of the season. I didn't start paying that back as soon as the money came in, I didn't start paying it back until I closed, 3 days before I closed, but I paid the exchange for the checks. I had the $70,000 until three days before I closed. I borrowed it from J. F. Lewis, Valdosta, Ga. He hasn't a penny's interest in the warehouse, but he may own some of the little notes

scattered about. Mr. Lewis was not in the basket business; I bought my baskets from the Sealy Manufacturing Company, at High Point. Mr. John Lewis didn't have anything to do with that, and didn't get anything out of it at all. I didn't use the two trucks I referred to for hauling in tobacco for my customers; we have a code, we can't do that. We had a code last year and this year. The federal code was last year and we had a voluntary code this year. The code for this year was agreed upon by the warehousemen's association, and in it was not to haul tobacco. Prior to that, I had never hauled a load in my life; I can't say what the other warehousemen were doing. The $109,000 I used in one day this season was used in buying tobacco, paying for the tobacco; I paid the farmers that in one day; wrote that many checks in one day, $109,000. If it wasn't my own money, I don't know whose it was. I paid the farmers for the tobacco the buyers bought; I pay for everything that goes on my floor to everybody. Those checks were paid at the Citizens & Southern Bank. The Bank got the money from me, and I borrowed it from John F. Lewis. I did that on $70,000 by floating checks, as I stated awhile ago, where people carried them home and did not cash or deposit them in Valdosta. They all got checks and some [fol. 235] of them carried them away, and sometimes it was a week or 10 days before they came in. If all our checks had been cashed quick, it would have taken $150,000 for me to pay off. I didn't mean to say that I bought $109,000 worth of tobacco myself; I meant that much tobacco was sold in my warehouse, and I paid the farmers for it. Each day I pay the farmers for every pile of tobacco and charge it to the companies who buy it or the man who buys it, and render him a bill and he pays me when he wants to. Some pay me every two days, some a week and some over a week. That is just a part of the financing of a warehouse. I pay the farmers for their tobacco bought by the buyers, and the buyers pay me the amount advanced for each one of them; they repay me sometimes in two days and sometimes in a week. That is what I mean when I say I paid out $109,000 in one day. I use the tobacco warehouse I own for only about a month as a tobacco warehouse, for the Georgia season whatever it may be, 2 weeks to 5 weeks. I have never been able to do anything with my warehouse much for the balance of the time, for years and years; never got anything at all. This last season I stored a little

hay in there, and I got 50 bushels of corn and 5 tons of hay for the use of the house a year. I have never been able to rent it; sometimes get a little rent out of that. Usually they stand idle most of the time. I usually get a man when I go out of my office to stay there and see the building is not torn up. As to whether it is cheaper to own a warehouse that size than to rent it, there are two or three ways of looking at that; it might not be cheaper every time. I think it is fully as cheap to rent as to own one. There is not much difference in renting a warehouse and owning on-. What I know about the warehouse business in Georgia is with reference to my own business. There are four tobacco warehouses in Valdosta. It is hard to say what the average number of pounds that can be put on the floor of [fol. 236] one of those warehousesis; it depends altogether on the size of the piles and the number of pounds on the basket. Heavy piles increase the tonnage, small piles decrease it. My house is the largest in the town by far, and I reckon the largest in the State. I can put 400,000 good big piles of tobacco and sometimes get 430,000 heavy piles on my floor. The number of piles is according to the number of pounds in the piles. The house will hold between 3,900 and 4,000 piles. There are two sets of buyers on the Valdosta market. As to how many piles of tobacco one set of buyers can sell or buy during a day's sale depends largely sometimes on the grade of tobacco they are selling. If it is a grade of good quality, you can't make the time, but the rule is 360 piles per hour. We sell seven hours, and the number of piles sold per day would be seven times 360. I have sold out my warehouse in one day, but this season it took about 1 day and three hours to sell it out. There are only two sets of buyers in Valdosta. The number of pounds of tobacco that can be sold in any one market in one day depends on the number of sets of buyers. I would not say that as much tobacco could be sold in Valdosta in two warehouses with 2 sets of buyers as is sold in four warehouses with two sets of buyers; because you can't get your tobacco up off the floor fast enough to fill it in right behind it every time. You have to have enough space, ⅓ or ¼ of the floor space. Suppose I start selling at 9 o'clock that morning and it takes me to five o'clock that afternoon; sometimes you don't get that tobacco off of the floor until 3 o'clock next morning, so you can't cover the floor and start it again at nine o'clock. You would have to have extra floor

space to cover the floor while I am selling and cleaning up and selling again. You couldn't sell all the time in my warehouse or in any one warehouse; I couldn't keep it off the floor fast enough, because the companies have five or six [fol. 237] hours to get the tobacco off; that's the rule. They made the rule themselves, the Board of Trade. If the sale closes at five o'clock, sometimes it takes them all night to get the tobacco off, and sometimes they quit and don't get it off until the following morning. Under the rule they have only five or six hours to get it off, but we don't push them on it.

I could push them by being mean or nasty about it, but it wouldn't do any good, you can't do business that way. One warehouse may be made of brick and one of tin and one of wood. The warehouses in Georgia do vary in the material of which they are constructed; there is right much difference in them. I don't know whether they vary largely in the cost of construction or not; I don't know prices. I have seen brick and tin warehouses in South Georgia. I can't say whether the cost of construction or value of one warehouse would be worth twice as much as another, or not; I know there is a variation in the cost, but how much I cannot say. As far as the warehouse business is concerned, a warehouse with a tin roof and made out of wood would be worth as much as one with a composition roof and built of brick, if it had a good roof and a good floor. No matter what kind of business it is, if it had a good roof and a good floor, it is worth just as much, regardless of the cost of construction. Give me a good roof and a good floor and one is worth as much as the other, but the value in the property won't be there. It will be just as good for a warehouse whether it costs $50,000 or $20,000 to build it, if it has a good roof and a good floor. I have never heard of one tobacco warehouseman charging less for the use of their warehouse and for services than others; may have been some people who did it, I don't know. In my experience I never heard of it. The charges have been practically the same in every state I ever went in, practically the same charges wherever you go. I don't think [fol. 238] advertising is worth a nickle in the warehouse business. The man who has got the brains and guts to stand up on a sale and push the farmer's tobacco is the man

who sells tobacco. You can increase your sales very little by active soliciting. We all do a certain amount of soliciting because it is more or less the custom to do that. We go and see them and ask them to come and see us, because if you don't, they will say, you didn't come to see us. The warehouseman feels he better go and see him and ask him to come in, bur really you can go out and see a farmer and he can promise to bring his tobacco to you, and if he does it and comes on a sale and you don't try to make him a good sale and get him — market for it, he is not coming back. So it is the man who stands up and risks his money and helps the farmer that really sells tobacco. I have those solicitors on my payroll because I have had them for years soliciting tobacco for me, and because we all use that system of soliciting, and then I use them in the warehouse for the rest of the season. It is true that when tobacco is sold on the floors of the tobacco warehouses in Georgia, that the purchasers of the tobacco follow right behind the bookkeepers and tie their tobacco into sheets and begin taking it over to a side of the warehouse for loading purposes. Usually they are behind the bookkeepers. They have to tie it up and leave it there for a period of time. Sometimes they sheet it behind the buyer at the time and let it lay there five, six or seven hours or longer before they move it, but they sheet it to keep it from being wasted or scattered. The tobacco bought today, after the sale is over we make a bill to each company buying tobacco and give it to them sometimes that night or the following morning, and they check that bill against their receiving book, and it is the following day before they do that, and if it tallies with our bill, then they issue us a check. But that does not mean we got the check then in some cases. They pay [fol. 239] off in different ways in Georgia. Up until this year Liggett & Myers never paid off in Georgia. The bill was mailed to Durham and checked there and paid from there, and it took four or five days to get our money. Now, this year, they paid off in Georgia. But it will average three or four days for us to get our money.

The Greenville Tobacco Company, Jenkins and other companies along their line, their bills, most of them, have to go to the office, home office, at Greenville, N. C., and they stay as much as one week behind with me. China-American with a pay-off located in Valdosta, stay about a week be-

hind with me. In other words, they owe me for a week's purchase before I hardly ever get a check from them. As a general rule the money I have tied up in this tobacco is tied up about a week. The time has not been shorter than that this year with some of them. It is with Liggett, but Greenville and China-American have not hurried up any. The large companies of the world send their buyers to the floors of the warehouses in Georgia, and nowhere else in Georgia, to buy tobacco; they don't send them anywhere else except the warehouse floors in any State. The big companies send them to the warehouse floors to purchase tobacco; I don't know what some little speculator does; can't state what he might do. The real tobacco companies, such as Imperial, Liggett & Myers and Reynolds, won't buy except through warehouses, because every pile of tobacco on my floor I have to revenue to the Government, and they have to revenue to me, and at the end of the season the amount of that that you have revenued to the Internal — Department has got to correspond to the amount of pounds that have been bought, so there cannot be a variation. They have got to tally. That's the way the Government has a check on them, and you can't make a mistake. You have to show revenue for every pound bought by Liggett & Myers and any other company, and then they give me a revenue slip from them to me, which I send in. I [fol. 240] imagine if a tobacco warehouse were used for storing cotton, fertilizer or other commodities like that, it would have to be bonded; I don't think you could get any storage unless you had it bonded. I know that's true in Valdosta. We have bonded warehouses that store all that stuff. I don't know of any tobacco warehouses that have been used for cotton warehouses; I think the Alliance Warehouse there in Valdosta probably is a stock company owned by a bunch of farmers. I think that is used to store some cotton in certain periods, I don't know how. I have seen cotton in there, but I understand it is a bonded warehouse. Ours is not bonded; we don't store stuff like that. I can't say that owing to the fact that the tobacco season in Georgia is early in the year, it would not conflict with cotton storing. I imagine it would depend according to the early crop of cotton and how they got it out. I have seen the farmers, a number of them, picking cotton when we closed the season there, and would have 50 to 60 per

cent of the cotton picked if it was a seasonable year. This year, I don't think that is true, on account of the wet weather. Most of it seemed like it was rotting in the field. Our expenses vary very much from year to year. Ba k in 1929, 1928 and 1929, and up to 1930, the state was running around 100 millions of tobacco sold. We based the succeeding year upon that year. We hire our forces; have to hire our forces in March and April before we can determine what that crop of tobacco is going to do and how the season will effect it. The only thing we can base it on is practically the previous year. In 1931 I had a tremendous loss on account of hiring a force based on 1930, and then in 1932, when we had absolutely nothing but a total failure in the State of Georgia so far as the tobacco crop was concerned. I had made contracts with these men; you can't wait until two or three weeks before the market [fol. 241] opens. We have to contract ahead for our people, and we estimate whether it is going to be a certain amount of tobacco sold, and we figure each section if we operate in several places, and we try to figure if we will hold our position from one year to the next, and we know that if we handle a certain amount, a certain number of pounds, how much help we will need. That is the way we have to figure on our help, and when we have a set-back, of course we are overloaded with help. That is not true with reference to common laborers, the laborers that push the trucks, but it is with other labor. The price of tobacco is very variable from year to year. My expenses are based on the probability of the actual work I do. In other words my expenses will be just as much on one million pounds at two cents a pound as it would on one million pounds at 20 cents a pound. It is based on the poundage, and partly on what I think we will get. The value of the crop would not cut our expenses. It will help us in what we make to pay expenses. What you make is determined by the value of the tobacco crop each year, if you are selling on a commission basis. Our expenses are not determined by the value of the crop, but by the volume and what we do. My total income this year from warehouse charges was $24,006.92. That was after the charges fixed by the legislature went into effect. I am not positive how much of that I paid into the registry of the Court; I don't think I have those figures here, but it was about $4,800 some odd dollars, I

think. $24,006.92 was what we took in; what we realized gross. In operating a warehouse business, I think it is immaterial what the house costs, if it is suitable and conveniently built, whether it costs $100,000 or whether it costs $25,000. The principal factor is the ability of the warehouseman to know tobacco and make it bring its true value, but you have to have floor space. You have got to [fol. 242] have a house large enough to have floor space to take care of the tobacco. You can't take 15,000 feet floor space and make money. You have got to have from 40,000 to 60,000 feet of floor space. Regardless of what the building costs, the floor space is what counts in that way.

I know of one warehouse in Georgia that is leased for a definite sum for the season; it is the Savannah Avenue Warehouse, Valdosta, Georgia. I know how much they pay for the lease; it is $3,500. That is for the 1935 season. There are three different ways in which a warehouse operator operating a warehouse may do business; some of them own their houses, some of them lease them and pay so much per thousand pounds, and still others pay a flat rental. Then I think that in some instances the people who own the houses may make a contract with them in various ways. You might find 10 or 15 different ways they operate; don't know about that, but I think before you get through with this business, you will find many ways they operate them. Several things can determine whether a tobacco warehouseman operates at a profit or a loss year in and year out. The price of tobacco and the amount he sells are two of them. If there is a poor grade of tobacco, poor seasons, poor quality, then you can't make any money. I can only speak for myself *for myself* on whether I have made money in a given season; I only know for myself; I have my books here. I know who leads in the number of pounds sold in Valdosta; it is B. B. Saunders Warehouse. I sold 3,033,000 pounds this year. I don't know the gross value of that tobacco. I don't know how many pounds of tobacco were sold at firsthand sales on the Valdosta market this year, but the result all-told according to the sales supervisors was 8,600,000 some odd pounds; then if you had resales you might get a comparison. I haven't the state figures except for my warehouse, but to give a comparison, of course they all don't [fol. 243] handle as much resale as others, but I had 3,354,000 pounds of tobacco; that's resales and firsthand sales.

The firsthand sales were 3,033,000 pounds according to the figures I have. I think that leaves approximately five million pounds of tobacco which was sold by the other three warehouses in Valdosta. Referring to the profit and loss statement of B. B. Saunders for the season of 1935, it shows a total of $24,006.92 received by me. The expenses shown are advertising $227.90, expense account itemized $5,103.11, interest and exchange on bank deposits $1,605.15, interest annual payment on warehouse $1072.50, labor account $2,416.75; over and short account, lost tobacco, $158.52, account for difference in errors in checks $53.61; and salary account $5,846.77. Those figures make a total of $16,484.31, and the profits from the operation is only $7,522.61. The amount charged off as rent on the building is $3,500, leaving net profits amounting to $4,022.61. Those charges were based on the charges the State set as warehouse charges, this year. I can't say positively how much money represents the difference between charges fixed by the statute and the charges actually made, but my recollection is it was $4,600. That's from recollection. It is down there in that statement. I want to make this explanation here: there are no charges for my work; I have drawn nothing. I have operated the place without a penny of compensation at all. If you add $4,000, which is now in the hands of the Clerk at Macon, to the $7,522.61, which represents profits on operations without considering the amount in the hands of the Clerk, that would make approximately $11,500, but that would leave out my compensation. As shown, my net profits were $7,522.61. That added to the $4,000 with the Clerk in Macon makes $11,522 something, which represents profits on operations for the old charges, and then you would take [fol. 244] off $3,500 rent. The charge in my expenses of interest and annual payment on warehouse, $1,072.50, is included in my expenses. That represents interest on borrowed money. It is not an annual payment on the warehouse, it is interest on the notes, on the purchase price. I still owe some indebtedness on my warehouse. That is not the amount I owed on my warehouse this year, it was more than that, but $1072.50 is what I paid; it was more than that. In the deductions I have made I am charging up interest on the purchase price of the building; I paid $1072.50, just as I said, and I charged off $3,500 as rent on the warehouse. I don't consider $3,500 as the fair rental value of the ware-

house; I consider $5,000 the fair value. I am charging $3,500 as an amount charged off as rent on the building. If I own the building, I have to pay rent. You can't own any land for nothing. As I see it, you are entitled to rent. You are not entitled to both rent and to interest on your indebtedness, unless you owe interest on the building. I charged $3,500 rent on the building just the same as if it did not belong to me. The $1072.50 interest paid represents the interest that I paid. I charged both interest and rent according to my books. The $1,072.50 charged as part of my expense for 1935 is an annual payment on the warehouse. In addition to that I have charged as an expense $3,500 as the rent of the warehouse. If I had had to rent the house, I would have had to pay $4,000 to $5,000 for it. I didn't have to rent it. I bought it and it belongs to me, and I owe some of the purchase price to the person from whom I bought it. If I did not charge as an expense the part of the purchase price of the building, my net profits for 1935 would be what those figures would show. The figures should stand for that. If I regarded the warehouse as belonging to me, and did not charge any rent, but did charge the annual payment on the purchase price, my net profits for 1935 would be ac- [fol. 245] cording to the statement, whatever it is there. That is all based upon the statutory charges and show or reflect my operations for the year 1935 under the charges fixed by the legislature. All warehousemen charge a certain amount for auction fees, a certain amount for the weighing and handling of tobacco and a certain commission on the gross sales; I charge a certain amount. I do not know definitely what the statutory provision with reference to those charges are; my bookkeeper will give that. I cannot tell how much of my gross income of $24,006 is derived from the amount of charges for auction fees, how much is derived from the amount charged for weighing and handling, and how much from the commission on gross sales; I would have to figure every sale this season to get it. My bookkeeper figured each sale as it went. Each farmer's bill shows auction fees, weighing fees, on the bill, and it is totaled at the bottom and taken off and put on a check stub. Also the 2½ per cent. commission. That is on the check stub made by whoever writes the check. We don't keep it separate. We keep it on the farmer's bill, and it shows on the bill as recorded. To separate those sources of revenue, you would

have to figure every sale made in the year. My bookkeeper can give the total amount of each sale, the charge for auctioneer's fees, the charge for weighing and handling and the charge for commission on the gross sale, because he figured the charges on every sale made, stubbed it and sent it to the Court. The auction fees depend to a certain extent upon the number of pounds in each basket. We get a certain amount on the basket under a hundred pounds and a certain amount on a basket over a hundred pounds, a certain additional amount: that's fixed by statute. The same is true with reference to weighing and handling, the amount being a little more on each basket. I think the charge of 2½ per [fol. 246] cent on the gross sales is the same, and has not been changed by the statute. I can't give offhand from memory the farmers in my territory whom I assisted during the year 1935 by advice and supervision in the growing of their tobacco; I wouldn't undertake to do that. It would take me three weeks to do it. The solicitors did not have anything to do with that. The solicitors probably went out and discussed their tobacco with them, but the assistance I gave personally was all over north Florida and south Georgia. I didn't employ anybody but myself for that. I didn't employ anybody for 1935 to give the farmers advice on growing their crops. The solicitors that went out went out to what we call drum tobacco, and to tell the farmers they figured I would get more for them there at my warehouse, and that I was in the tobacco warehouse business. That always was the custom. It helps in the success of a particular warehouse, in a certain way, but I don't think it is worth the cost to me. It is worth something, of course. I can't say how many years tobacco has been grown in Georgia. I know it has for twelve years, I have been there twelve years. You would have to ask the farmer how long it will be necessary to educate him in growing tobacco so as not to need that assistance. Some of them down there will live 100 years and then some wouldn't. They are no different from the North Carolina farmers. I don't employ anybody in North Carolina to perform the same services with regard to instructing the farmers in North Carolina as I instruct the farmers of south Georgia, giving them advice, etc. It is not necessary. They used that method in North Carolina some years ago, and in South Carolina too. It will take quite a little while to educate them in Georgia

where they can stand alone. I cannot state exactly the amount of money I spent in 1935 for the purpose of educating the farmers and for the purpose of inducing him to bring tobacco to my warehouse through my solicitors and myself; [fol. 247] I have all of the items charged there. I didn't have anyone except my solicitors and myself to do that work. I would like to add that when my solicitors went out and a farmer asked him anything about his crop of tobacco, he would give him his advice. I haven't a charge on my salary account payable to myself.

I don't think I would ever be able to dispense with the expense of having solicitors and going out and seeing the farmers and soliciting them to come to my warehouse, because you have always got to have some representative for you in the different territory. They are still soliciting in North Carolina; I have seven men riding today. We do no demonstrating and going out and showing them how to grow or market their tobacco in North Carolina. So far as the soliciting is concerned, there is no greater expense in Georgia than in North Carolina. I haven't a cent charged in my expenses for demonstration. I haven't in North Carolina either. I am the only one who did any demonstrating work; I did that myself, and have not charged for it. I can give the names of plenty of farmers in Lowndes and counties adjacent to me that I went and visited this year. That was my practice. They would phone me to come and see them. V. C. Peters called me up and asked me to come out there, that his tobacco was not doing right and wanted me to give him advice on how to plough it and how to top it. I guess he has been planting tobacco 10 or 12 years, but these abnormal seasons when drought comes or wet seasons, they don't want to risk their judgment, and if there is a warehouseman in the State of Georgia they know, they will send for him, and I ride hundreds of miles. Jim Hall, out four miles in Lowndes County, is another one I visited. I have been to see Mr. Will Wisenbaker in 1935. He is one of my solicitors, but that doesn't make any difference. He wanted somebody else's judgment. I have been to see, in Florida, I would say 400, and it would take quite awhile to name them. There is one tobacco ware- [fol. 248] house in North Florida. It is at Live Oak, Florida. Live Oak is the only one I know of.

Redirect examination:

My testimony on cross-examination as to my profits has been confined to the 1935 season. There was quite a lot of difference in that season and previous seasons back to 1930. There would be a variation there of $5,000 to $6,000, $5,000 less in operating. (Witness reads from statement) In the year 1930, the gross earnings was $34,454.12, expenses $24,952.98, profits $9,501.14; the year 1931, commissions gross $17,134.45; expenses $18,379.80, loss $1,245.35; year 1932, gross $6224.33, expense $8,719.87 and loss $2,495.54; year 1933, gross $19,698.48, expense $11,757.74, profits $7940.74; year 1934, gross $18,563.44, expense $14,672.24, profits $3,891.20. Those were based on the old charges that we used in those years. In none of those years previous to 1935 was there any expense or item of charge representing my time, experience and services in connection with that warehouse; never has been anything charged in for that. That was what was actually taken in in profits without me earning a penny for my year's work. I mean it is without my drawing anything out of there. There is not a thing in those statements that represents any payment to me for my time, services and experience in conducting this business, other than net profit or loss. Sending out solicitors is a system that we all use because one man can't go over the territory to visit customers and see them all in two or three weeks' time, so we go out into various counties and we take a man in a certain section that we sell tobacco for and who will draw tobacco for this market, and we get him to represent us in this territory. That's why we call them solicitors. This man then fills a man's place on the warehouse floor when we come to the market. His contact with the growers is purely to establish a per-
[fol. 249] sonal contact or touch and create good will for my warehouse and between me and the farmer. In addition to the warehouse I own at Valdosta, I lease one. I have leased it just this one year. The rental for that is not set up in my expenses. I own another house in Valdosta, and leased it. This is not the house adjoining my warehouse, it is a separate house altogether, a house I lease. The rental is not set up in that statement, it has nothing to do with this statement. That is a separate organization. From the standpoint of the warehouse business, all that is necessary in a warehouse is a good roof and floor. The

difference between a tin or galvanized iron warehouse and a brick or wood warehouse is the length of the life that you may own it, and the value of it as a rule, the real estate value. If you had a tin building warehouse, you might not be able to use it for any other purposes, whereas if you had a nice brick warehouse, you might use it for various things, and then sell it and dispose of it for some other purposes; and it has a value in money which the ordinary tin warehouse would not have. Tin warehouses or wooden warehouses will not last as long as brick warehouses, and you have to repair them more. On a tin warehouse you will spend more money to keep it repaired than you do on a brick warehouse with a composition roof on it. I set up a charge for rent of $3,500; I have not set up in my statement any amount as depreciation to my property. The taxes on the property is included in the expense, I think; I don't know whether they are or not. I testified that the fair rental of that building I own is $5,000 a year; that's what I paid for it. The $3,500 is an arbitrary figure I used to represent depreciation and the other expenses. It takes more to keep up a tin building than it does a brick building. It naturally would cost more for the roof that it would — a brick building with a composition roof. I consider the fair yearly rental value of my building to be $5,000. I rented [fol. 250] and paid $5,000 for it a number of years while I was renting it, and furnished my own baskets and equipment. In 1935, we had the heaviest tonnage we have ever had in 12 years per acre, yielded more per acre than it has ever yielded in the 12 years I have been there by far. The reason for that was that there were good seasons through Georgia, and the tobacco was good in the bigger part of the state and made more pounds to the acre average. The government report will show that more was made than ever before; and it might be 20 years before you have another season like it—indefinitely, may never have it. If one man charged less than another man, or one man charged higher charges than another, the effect of that would demoralize the whole state in selling tobacco, because there would be no system. In other words, if one man was selling at 2 per cent. commission, another at 3, of course the man selling at 2 would get all the tobacco and sell it. I could not stay in business with my neighbors, with my neighbors selling for any less than I do. I would probably have to lower my price and probably get clear out of business, I

think I would. In the 12 years I have operated a tobacco warehouse in Georgia, not a single grower in the entire belt I sell for has ever said anything about the charges but what they were satisfactory, and I have had numbers of them to state that they were perfectly satisfied with the charges that we were charging and would be glad to go and testify in court if I wanted them to to that effect. I can get 100. I don't know whether there is any warehouse in Georgia that sold more poundage this year than mine, or not; I haven't seen the final statement for this year, but with the exception of one year, I am pretty positive I have led the state for five or six or seven years. I am positive that maybe with the exception of one year, I have led for seven or eight [fol. 251] years. The charges that we have charged up until this year have in my opinion been as little as a man could stay in business in Georgia on and charge. If we had to charge any less than that, I think you can bid us all farewell, because you can't operate and do it. When one takes a period of five years and go back, he will see.

Recross-examination:

I have operated this year and made some profit on the statutory charges, but I want to make this statement right here, that if tobacco was selling for from 8 to 10 cents a pound as in 1930 or 1931, I would have lost $8,000 on the tobacco I sold this year. I wouldn't, in that instance, have been able to decrease my expenses. That is because of the poundage, the tonnage we sold. If we had sold that much, we would have had to pay for the hands and labor to handle it, and if tobacco had been like it was in pounds and it had sold for 6 cents in Georgia, as it did in 1931, $10,000 would not have paid my losses in the warehouse I operated this year. And 10 cent tobacco would not have made any money; it would have been a loss. Now 20 cent tobacco means something else. The farmer grew tobacco and sold it for 6 cents in 1931. I couldn't state that the result was that he threatened to discontinue growing it; he kept growing it. The price was very little better. A farmer in South Georgia cannot grow tobacco profitably at 6 cents a pound. In the statement I have referred to, showing the gross amounts received and expenses for the years 1930, 1931, 1932, 1933 and 1934, the expenses do not include the same items for payment on the purchase price as expense charged and rental

value on the building that the 1935 expenses do. All of the items are there for those years. Every item is itemized and what it was for, and it shows that it was not charged in those cases. I didn't make money enough to pay it and could not charge it. I was running my own warehouse those years. I [fol. 252] charged it this year because I made it. It is not absolutely necessary for us warehousemen to agree upon the charges in order to make any money; we don't agree upon it. I don't know how it happens. I never promised any man what I was going to charge. I have charged the same charges ever since I have been in Georgia; I charged the same charges when I got there, because that was the charge being used when I came into the State of Georgia,—the charges that were being used in my town. I don't know what the others were charging. I haven't heard of any competition from any warehouse in the adjacent counties because charges were being made less than the charges I was making. I suppose that if the warehouses in Nashville, Berrien County, Georgia, had been charging less than I did, I would have heard of it. I never pay any attention to what the other man is doing. I just run my business. If the warehouses in Hahira were charging less than I was, I wouldn't pay any attention to it. I am running my business; he is running his. I didn't say that if some of the warehousemen were charging less than others, all of us would have to go out of business. I said if the charges were reduced and tobacco went to 6 and 8 or 10 cents a pound, all of us would have to go out of business. I didn't say that if tobacco warehouses were competing with each other and some charging less than the others, I couldn't stay in business. If next year the majority of the warehousemen in South Georgia and I were charging the warehouse charges I am charging this year, and a large warehouse in Tifton and another in Adel and one in Nashville would reduce the 2½ per cent. on gross sales to 1½ per cent., and reduce the auctioneer charges and the charges on weighing and handling, I don't think it would demoralize the warehouse business in South Georgia. It would put that fellow out of business who reduced his charges and the other fellow would stay in. The [fol. 253] man who charged less would go out of business, he could stay in but he couldn't make expenses. There is harder competition in the warehouse business than any business I know. I don't know what other people charge; I don't

know how they do. I don't know of any competition in the warehouse business in the actual warehouse charges in South Georgia; I only know what I charge. I don't know that they all charge the same. In the bill presented to me by my attorney, I swore to the charges I used. I swore that every fact stated in the bill was true. Where the bill says "the schedule of like charges which were paid to your orators during the last tobacco marketing season and which have been paid for a number of years is as follows", and names them, "your orators" was the 44 warehousemen. I did swear that the auction fees were 25 cents per pile up to and including 200 pounds; fifty cents per pile above 200; weighing and handling fees, 25 cents per pile up to 100 pounds, 25 cents for each additional 100 pounds; and commissions, 2½ per cent. on the gross sales measured in dollars, and that "these charges are fair and reasonable; they have been satisfactory to the persons who grow and sell leaf tobacco under the plan herein referred to and under which your orators operate", but that doesn't state that I positively said that I knew every man did it. I said I knew no difference in the charges made by any of them, but still a man may be operating a warehouse and another man unbeknowing to anyone else in the county may give a fellow a rebate. That would be a change in the charges. I swore to that petition which schedules the charges and refers to "your orators", that means all 44 of the warehousemen. I don't know of anybody who violated that schedule. I don't know of any warehouse in South Georgia not a party to that schedule of fees, and do not know of a single warehouse in South Georgia that is not one of the plaintiffs in this case.

[fol. 254] Redirect examination:

The growers are not charged anything other than the schedule of charges I have just read for services rendered in selling their tobacco; I don't charge any others.

H. B. Glisson, sworn in behalf of the Complainants, testified as follows:

Direct examination:

My name is H. B. Glisson and I reside at Valdosta, Ga. My occupation is bookkeeper; have been keeping books about

18 or 20 years. B. B. Saunders is my present employer; have worked for Mr. Saunders 12 years. He is in the tobacco warehouse business. I have been keeping books for Mr. Saunders, for his tobacco warehouse at Valdosta, Ga., for ten years. (Counsel exhibits to the witness a statement.) I made up that statement from the books of Mr. Saunders. I kept the original books. With one exception that statement is from the books, and that is the last item if $3,500 here for rent. That does not appear on the books. It was not charged off as rent and depreciation on the building on the books when the statement was made, and that is not on the ledger. The statement is in two divisions, the first I made up for five years, and the supplementary statement for 1935. The gross receipts from all sources for those five years was $96,074.82, and for 1935 it is $24,006.92. That amount is the gross receipts for 1935 under the schedule of charges as fixed by the act of the legislature under attack in this case. By using the schedule that had been used before, that amount would have been increased by about $4,800, making the gross receipts $28,800 in round figures. I have those exact figures. The actual figures and difference is right here. It would be $28,818.35, and the actual figures on the increase would be $4,811.93. That is the difference be-
[fol. 255] tween the old and new charges. The gross receipts for 1930 were $34,454.12, the total operating expense was $13,001.14, and if you consider the $3,500 which was charged off as rent and depreciation, it leaves a net profit of $9,501.14. That includes the $3,500 for rent; $3,500 deducted from $13,000, which leaves net $9,501.14. In 1931 the gross receipts was $17,134.45.

The operating expense was $14,879.80, and $3,500 for rent would leave a net loss of $1,245.35. For 1932 the gross receipts were $6,224.33, operating expense was $5,219.87, and $3,500 for rent off that, would leave a net loss of $2,495.54. In 1933 the gross receipts were $19,698.48, operating expense $8,257.74, and $3,500 from that would leave a net profit of $7,940.74. In 1934 the gross receipts were $18,563.44, operating expense was $11,172.24, and $3,500 for rent leaves a net profit of $3,891.20. In 1935 the gross receipts, on the same charges, were $28,818.85, operating expense was $16,484.31, the amount paid into court on the difference in charges $4,811.93, and that would bring the profit down to $7,522.61 from the operating expense, and

$3,500 off for rent would make a net profit of $4,022.61. Applying the amount deposited in court as a part of the net profit would not make the net profit $8,000 in round numbers; that would increase the gross and take it off the net. That is the way it should be done. I put it down as a deposit. If the old charges had been still in effect, we would have that much additional net profit,—$8,800. It would not be something over $11,000; profits of $4,022.61 and paid into court $4,811.93, would make $8,834.54. I am not subtracting the expenses from $24,000 instead of $28,000. If you take the actual expenses off $24,000 and then add the $4,811.93 back to the result, it will give you the same thing. The net profit with those old charges prevailing would be $8,834.54. I keep our books on an accrual [fol. 256] basis, I suppose you call it. We do charge some things we don't pay out. We do at the end of the season, for instance, taxes and things like that, like we make up income tax, but not during the season, we don't. We don't charge against our books or credit on our books what somebody owes us before it is paid to us. We credit no accounts until we are paid, and charge nothing until we get a check for it, except in the case of this $3,500. In making up my report of the expenses, I drew them from about five accounts, I suppose. Those accounts are advertising, general expense, interest and exchange, labor account, and of course loss in what might be called an over and short account, variations in checks, lost or stolen tobacco, and salary account. In the salary account, no charge is set up for Mr. Saunders personal salary in connection with this business. No charge is set up in any of those expense accounts for that item. The figure I call net profit or loss, as the case may be, is all that Mr. Saunders got out of the operation of that warehouse. In the statement the charges made under the general expense are itemized. There are about 15 or 20 of them here. For intsance, in this particular case down here, there is an item for hauling baskets from Asheville, transfer of baskets from one house to the other. We had to switch those baskets. That is for the year 1935, and it is itemized in this list here. Taxes are set up in here, what we paid last year; I believe there is, if I am not mistaken. They are State and County taxes. No occupational taxes whatever are included there except city license, which is $50.00. There is no depreciation account

set up for the warehouse. We have no depreciation account on our books other than the $3,500 charged off, which is very reasonable. I am pretty much familiar with the warehouse owned by Mr. Saunders in Valdosta; not so much the operation of it, but of the books. I hardly know, as an [fol. 257] accountant and bookkeeper, what would be a proper depreciation each year on that building, but I would say 10 per cent. easy. I have items in this general expense account showing repairs to the building, just annual repairs, like fixing the floor and roof and stuff like that. There are no charges for painting the building, it has never been painted. I can give the total figure paid for common labor each year. For 1935 it was $2,416.75. The salary account for 1935 was $5,846.77. For 1934 the labor account was $1,116.25, salary account $4,688.88; for 1933, labor account $897.65, salary account $3,118.35. I want to check that on 1933, as I made up these records, first, from the total balances gotten off from year to year, through April, and the same is true for 1935, and I used to total the balance for work before the market closed and had to go back and make a supplemental statement, particularly for 1933, which really checked the figures short something like $500.00, but that is in here for 1933, labor account 1933 total $1,113.90, salary account $5,363.20; 1932 labor account $281.40, salary account $1,682.39; 1931 labor account $948.87 and salary account was $9,651.15; and in 1930 labor account $2,495.30, salary account $10,054.70. The rate paid for common labor varies from year to year. I couldn't give the rate from year to year; I could for the last two years. In 1934 it was 22½ cents an hour and in 1935 it was 18 cents an hour. Previous to 1934, for a couple of years back, the rate paid for the labor account was less than 22 cents an hour, but in 1930 and 1931 it was really more, because we hired them by the day at that time and paid them high wages, $2.00 and $2.50. Last year the federal code was in effect. We paid 22½ cents an hour then, in 1934. I have my original books here with me. They are open for inspections or questions.

[fol. 258] Cross-examination:

In my profit and loss statement for the year 1935, the total earnings by commissions and all revenue is $24,-

006.92, to which I have added $4,811.93, being the amount deposited with the Clerk in Macon, making a total revenue of $28,818.85. That is the actual gross amount of earnings that Mr. Saunders took in in the year 1935. The advertising account of $227.90, is for newspaper advertising. It is not for sending solicitors around to work with the farmer, that's in the salary account, and each account is itemized. The expense account, itemized, is $5103.11. I said the baskets were hauled, transferred from Asheville in North Carolina, and when I was asked to read the itemized statement of expense there, I did so; that's the first item there. Those were baskets he had at his warehouse in Asheville. The cost of those baskets were charged in the Asheville account, not in the Georgia account. There are no charges for baskets in this account. We sent the old baskets up there. There was 1,000 new baskets bought, but those 5,000 baskets were transferred from one house to the other. That did not represent any investment this year at all by Mr. Saunders. The sheets bought from Charlotte Bag Company were bought at Valdosta for use by those farmers. That item of B. B. Saunders, White Sulphur Springs, $700.00, was not a pleasure trip; it was for making two trips for the Georgia Tobacco Warehouse Association up there. Mr. Saunders is a member of the United States Tobacco Association. That is his expense for going back and forth there; it was in the interest of the warehousemen. That item for expense in connection with baskets from Aberdeen, is some more of those baskets shifted from one place to the other. That item, Georgia Tobacco Warehouse Association, $100, is fees, more expense. I charged that [fol. 259] up as an expense. The item, L. W. Goodwin, bonds for warehouse, $56.82, is money the warehouse put up as a bond. The name should be Goodman, he is the Secretary of the Georgia Tobacco Warehouse Association. It is for a bond the warehousemen had to give to the association. The item, H. A. Little, lawyer's fees, $75.00, is for some little litigation we had. Georgia Warehouse Association deposit, "dep." I have it, $250.00; that's a deposit we put up for good faith of the warehouse. That was for the observance of the code of charges and fair practices. I understand that is put up as a forfeit if Mr. Saunders did not observe the rates charged, and the code of fair practices. They have never made him forfeit that. The item, George

S. Simpson, rent $30.00, is for the tobacco storage warehouse; to store tobacco in off the floor. The amount paid to J. C. Lanier, 2½ per cent per thousand dollars code fees, is for salary for his services as code administrator for the warehouse association. The item, insurance on tobacco and insurance on buildings, $745.77, is insurance on the building. The building I think is $500.00, and insurance on storage to protect the tobacco on the warehouse at night and during operations was $245.00. The miscellaneous expense is $40.00. I can pick them out and itemize that; they are on the ledger. I don't know what they are offhand. The amount paid Valdosta Tobacco Board of Trade was $35.00; all warehousemen have that, some of them as high as $500.00. It is membership in the board of trade, membership in the Tobacco Board of Trade for the season. The farmers are not members of that Board of Trade. The item, Repairs to tires and gas, $704.64, is gasoline for about five or six cars and tires, two trucks at the warehouse and automobile repairs and tires. Those trucks were used in tobacco, part of it was, and part of it was to transfer storage, to transfer tobacco from our warehouse to the [fol. 260] storage place. He didn't use those trucks for any other purpose during the tobacco season. They were not used for anything especially during the balance of the year, just incidentally to get a load of wood. They are there to be used and are used all of the year.

I can state what part of that $704.00 is for tires and gas and hauling, by looking at the book. Practically all of it was for use during the tobacco season. The item, G. M. A. C., Chevrolet, $348.16, was for a balance due on a car for one of the solicitors in the country. We used that for our solicitor to go to see the farmers. Nothing is being done with that car right now, but we don't have those every year. That Chevrolet is being used in North Carolina now. I won't charge that $348.16 up to North Carolina too. That is not an annual charge; it is used in North Carolina now and probably a portion of it will be charged up there. You see we put the car on the road only in Georgia. $348.16 was not the cost of the car; that means a balance due on the car. The first payment was paid by Mr. Saunders personally out of his personal money; I think it was $300.00. He has had it a little over a year. He used it for about three months in Georgia. He charged $348.16 against the

warehouse in Georgia and then carried the car up to North Carolina. The item, Georgia & Florida, rent on land, $120.00, is rent on the land on which the building is situated. The warehouse does not belong to Mr. Saunders, we have a 20 year lease on that. We pay $120.00 a year. The item, C. L. Jones, rent on building, $10.00, is old tobacco storage. O. L. Carter, gas, $32.73; he is a solicitor in the country. That gas bill of $500.00 is more of it. There where I have repairs on tires and gas, $704.64, and then in the same account, O. L. Carter, gas, $32.73, and then another item for another Carter of $35.38, the reason the two Carter's gas bill is separate is because I just did not [fol. 261] include it in that bill or item. They have some in the other bill, but I just did not get that in that bill. That item there constitutes four or five or six charges on the ledger. In my account for 1935, my profit and loss statement, the total amount of receipts was $28,814.85, which includes the amount I have paid to the Clerk in Macon. The advertising account was $227.90, and the expense account was $5,103.11. That is what we have been investigating. The charge made for interest and exchange on bank deposits, $1,605.10, is one fourth of one per cent on all money deposited there, or on company checks and interest on borrowed money to operate with. That was paid to Mr. John Lewis or the Bank. The interest payment on warehouse, $1,072.50 represents an annual payment on the warehouse. The purchase price was $33,000. It was bought about eight years ago. He bought it from J. F. Lewis. I haven't the contract between Mr. Saunders and Mr. Lewis with me. It is down in Valdosta. I charged interest or an annual payment on the warehouse as if Mr. Saunders is the owner. I don't know anything about whether it is customary to charge rent on a building owned by the person operating the business, such as I have here, $3,500.00. That was not on the book and I charged it up afterwards. Mr. Saunders told me to do it. When I made up those statements it did not appear on the books. We took that in consideration in making up our income tax returns, wear and tear on the building. In these statements showing the expense for each year since 1930, I charged up the $3,500 each year. If that is not a proper charge, the profits each year would be $3,500 more than appears from this account. In those statements of expense

for the years 1930 to 1935, I haven't included payments made by Mr. Saunders to Mr. Lewis on the principal, just the interest. The same thing is true for 1935, just the in-
[fol. 262] terest with the exception of two years when we didn't make it and it appears as carried over and caught up. It appears in the other items as an expense charge which is deducted from the gross receipts in order to get at our net profits. The two years it was carried over and was not paid, the next year I charged it all up. I don't recall what those two years were, the statement will reflect it. Those were the two years we did not make anything. 1931 was a year we did not charge it, and 1932, I think. The expense account for 1933 shows that we charged it in the interest account for 1932 and 1933, and did not charge for 1931. I did not bring 1931 forward. The expense charge in 1933 did not include exactly double the amount of $1,072.50. It would be approximately double that amount. In 1934 there is charged exchange interest and discount, $2,434.50. I probably took up the 1931 account there. The ledger would show that. This item here for 1934 is interest on the warehouse notes, and other notes too; that is just one year, so 1931 has never been charged up so far as I can tell. The labor account of $2,416.75, shown on the profit and loss statement for 1935, is not a duplication of the salary account of $5,848.00. The labor account was common labor on the floor, just the fifty or sixty common laborers. I haven't itemized that here; we might work one of those men and he may be gone tomorrow and we wouldn't see him any more. The only way we could itemize that was to estimate the number. It was not itemized on the ledgers or books, it came in on a payroll blank and was charged off that way. The over and short account, lost tobacco, amounting to $158.52, was due to tobacco being misplaced or stolen from the warehouse and we had to pay for it; where purchasers had bought the tobacco and it could not be delivered. For 1935 the warehouse lost only that amount on that item. The sales account, difference or errors in checks, $53.61, is a case of switching checks and cancelling them, or rewriting them,
[fol. 263] and that was because we paid them that much more than at first. If the gross earnings were $28,815.25 and the amount of expenses $16,484.31, and you subtract the expenses from the gross earnings, it will leave $12,334.00.

In the gross earnings I have taken into consideration the entire amount taken in, including the amount deposited with the Clerk in Macon, which makes $28,818.35. The itemized statement of expenses is $16,484.31. Subtracting the expense from the gross earnings will leave $12,334.54 net profits, without considering the $3,500 at all. That is not a profit unless we get this $4,811.93 back. On the basis of the charges used this year, and not on the basis of the statutory charges, the net profits made by Mr. Saunders this year would be over $12,000, excluding the $3,500. I know how much money has been deposited with the Clerk. By subtracting that from the $12,000 item, the net profits to Mr. Saunders, on the basis of the statutory charges, would have been $7,562.61. Included in that I have in our expense account $1072 and some cents of interest paid on the purchase price of the building. If you add that to the net profits received by Mr. Saunders on the basis of the charges fixed by the legislature, it would total $8,635.11. On direct examination I gave the expense account for the various years, and gave common labor for 1935 at $2,416.75, and salary account, $5,846.77. I stated that they varied from year to year, and in 1934 the labor expenses were $1,116.25 as against $2,416.75 in 1935. I can't account for that unless it was the method in operating. Mr. Saunders has operated more extensively this year than for the previous years. I can't account for that. The salaries for 1935 were $5,846.77 and in 1934 were $4,068.88, approximately $1,800 more in 1935 than in 1934. The cause for that was that it was more expensive to operate, had more work to do and a lot bigger rush, and we had to put on more men. [fol. 264] The salaries are for the high priced men, such as auctioneers, bookkeepers, clerks and so forth. I don't know how many more men we have had at work this year than last of that class of labor; I would say at least four or five more. That would not make a difference of $1800 in three weeks; we hired them for the season and sometimes it was for three weeks and sometimes for six weeks. The season only lasted about three and one-half weeks, but it amounted to more in actual work. In 1933 the common labor account was $1,113.90 and salaries $5,363.20. There was a difference in salaries in those two years. Sometimes you can get cheaper men than others. In 1932 we only paid common labor $281.40, and did not sell but something like 600,-

000 pounds. The salaries for that year were $1,682.39. That is a great deal lower than they were the preceding year. In 1930 we paid $10,000 salaries, and I will state why. In 1928 and 1929 we were selling four million and five million pounds of tobacco and we always contracted with our men in the spring of the year and from one year to the other. At that time we had two auctioneers and a double book force and expected to do business, and the tobacco was not made. We did not pay out in 1930. We made the same contracts in 1931 and expected it to come back; and at that time the salaries of auctioneers were about twice as much as they are today. I have those items, $9,651.15 for 1931 and $10,054.57 for 1930, itemized in that statement. The first item is B. B. Saunders, personal expense, $1,344.10. He ran the warehouse. I can't say whether that was personal expense charged against the warehouse. If I stated awhile ago that in none of these statements did there appear a single item charged to Mr. Saunders except the net profits, I should not have done it. I suppose Mr. Saunders told me to put that item for his personal expense in as a part of the expense of operating the warehouse. Those profit and loss [fol. 265] statements that I made, showing the gross earnings and expenses and profits and net profits and net losses, were made from the books. The books were made up for the other years prior to the present law. With reference to the other years, they are based upon the actual charges made and not upon the statute. In 1935 the original statement shows the income less the amount deposited with the Court, because I charged each check as I sent it to the Court to that particular account. I come up to North Carolina with Mr. Saunders each year. I do not operate the warehouse at Aberdeen. There are none of the charges or items of expense I have included in the operating expense of the warehouse at Valdosta that are properly chargeable to the Aberdeen warehouse, except the ones brought out already; none so far as I know. I don't know of any of the statements for B. B. Saunders warehouse at Valdosta, Georgia, of operations for the years 1930, 1931, 1932, 1933 and 1934, showing the itemized accounts of general expenses, that would have to be corrected to conform to the facts brought out on my cross examination; they would have to be changed. My summary was taken from the statements of profit and loss before the matter of interest and the interest account and

the $3,500 rent account was discussed; the $3,500 was considered in those figures on that summary; they were considered as an expense and were used to reduce the net profits each year. The interest account, with the exception of one year, was also used in each year; I believe that was 1931. The summary for the year 1932 shows a net loss of $2,495.54. If you take $3,500 away from the expense for that year, it would leave a small profit; $3,500 is more than $2,495.00, or whatever the figure might be there. I have regarded the $3,500 as an expense and taken it off. If I also disregard the $1072.50 interest for two years, included in the 1932 [fol. 266] account, it wouldn't make something over $3000 better off on net profit or loss. In 1932 the interest for two years was included because we failed to pay it in 1931. That year it was $1380, and altogether it was $2,384.46. I mean there was a profit of that much. I stated that that warehouse ought to show a depreciation of 10 per cent each year. It has been in existence about 14 years, and is still there. If we depreciate it 10 per cent each year, the whole principal of the investment would be gone in depreciation, but if you consider what was spent on it, it would take about 20 years for it to be gone. There is nothing seriously the matter with it now. It has a splendid floor in it. It leaks; we spend about $400 or $500 each year to keep down leaks. Most of the time that is charged up as an expense of the warehouse, and sometimes it is not. Sometimes Mr. Saunders pays it before the market opens. He hasn't spent as much as $400 or $500 and not included it in as an expense, but I said a part of it. If it was charged as an expense, it would take care of the depreciation, but I imagine that the expense of it altogether would amount to easily 10 per cent.

Redirect examination:

I testified on cross examination with reference to the variations in the salary and labor accounts from year to year. I don't know any particular reason for that variation other than some years we can hire people cheaper than others. The poundage handled in a particular year effects the amount paid for labor and salaries, has considerable to do with it. A lot of times it does not on salaries, but it does on labor. Very often we make our contracts with the salaried employees a year ahead of time, and we pay them whether there is work there for them to do or not. (Counsel

exhibits to the witness a statement, purporting to be a summary of operations of B. B. Saunders warehouse business [fol. 267] at Aberdeen, N. C., for 1934) I prepared this from his books. That statement is correct. I didn't act altogether as bookkeeper for Mr. Saunders at Aberdeen, N. C.; I assisted in it. I am familiar with the statement, and I made entries in the books. I haven't the books here with me covering that particular statement. This statement shows the revenue earned by commissions charged for operations in 1934 at Aberdeen, N. C., was $15,623.04, the total expense $11,251.39, and a profit of $4,371.65, and there is a summary of expenses also attached to this as to the other statements. The expense items charged there are of the same general nature as the expense items charged in the Georgia operations. I don't know the tonnage sold in the Aberdeen warehouse.

Recross-examination:

I know the warehouses charges fixed by statute in Georgia. It would take me two weeks, maybe three, to ascertain how many piles up to and including 100 pounds and up to and including 200 pounds and above 200 pounds were sold in that warehouse in 1935; I would have to go over all the records. The sales sheets would show the poundage on it, the poundage of the different baskets. I have those. We have the same records to show how many baskets weighed 100 pounds or less and how many piles or baskets exceeded 100 pounds, as fixed by the statute on weighing and handling. That record would show the poundage of each basket. It wouldn't show the weighing and handling charge at 10 cents per pile for all piles of 100 pounds and as it goes on up, unless you refigure. I haven't a record that will do that. It won't show the weighing and handling for each additional 100 pounds. I could get at the commission of 2½ per cent. on gross sales. I wouldn't think we had all of the records that would give those facts for the previous years, 1934, 1933, 1932 and 1931. The records, after a couple of years, are usually filed away, but some of them get worn out and [fol. 268] thrown out. There wouldn't be any way to make an accurate comparison for that many years back; you could for probably a couple of years. Even for the year 1935, on the weighing and handling at 10 cents per pile for 100 pounds and 10 cents per pile over 100 pounds in addi-

tion, I would have to itemize each pile to separate that part of our income from the other sources such as auction fees and commission, but you have got the information right there as to the difference in charges for 1935. I can't tell, for the year 1935, how much was received for auction fees and how much for weighing and handling, because that doesn't give the pounds in there, that statement and the books don't as to the piles. That's just the difference between the old and new charges. The farmer carries off the bill that shows that. We give to the farmer a ticket which shows the total amount of the bid and sale and how it is made up. We give the total of the sale and subtract from that the auction fees on the basis of the present charges and the weighing and handling fees and the commissions, and then pay him the balance. We don't keep anything on our records about that.

N. B. SMITH, sworn in behalf of the Complainants, testified as follows:

Direct examination:

My name is N. B. Smith and my residence is Harrodsburg, Kentucky. My occupation is tobacco warehouse business. I have been in that business thirty-one or two years. I operate a tobacco warehouse at Valdosta, Ga.; have been operating there since 1925, but operated two years before I went there myself. I have been there myself since 1927. I haven't my records for the operation of that warehouse at Valdosta; all my records got destroyed last summer, except only this year's business. I have got a little statement I drew off myself showing this year's business, and my [fol. 269] book is here. I keep those books myself partly; after I finish up with the season, I keep them partly. They are kept under my supervision. The books are available if anyone wants them for examination, I have the ledger here. I have a little statement here that I drew off the books myself which shows the results of my operations for 1935 in Valdosta. Refreshing my recollection from the memorandum, I can state the profit I made for 1935. I can give the gross income for 1935, within a few cents. My gross income for 1935 was $15,812 and I think a few cents, can't recall the exact dollars and cents. My gross expenses were

$13,800 and something, a few dollars, I don't recall. As to my net profit, I know what I have got in the bank now, but I have got one or two little items to come in. I got a gas bill made in August and used in the business and the telephone. I would state it now as $3,064, without two items. The expense figure I named does not reflect any payment to me from the operation for my time, skill or services. I have two partners, and not a penny has been drawn by either one of the partners for any compensation. Four of us was in it. There are four partners in the business; they are A. F. H. Wright, George Foxworth, Joseph J. Cozart and I. The figure of net profit to be divided between the four partners is $3,000 and some odd dollars. That is all the compensation that we will receive for our time, skill and experience in operating this business. That is all they or I will receive. I rent my warehouse. I pay $2,500 a year rental for it. I furnish everything except the scales; I furnish the baskets, trucks and all other equipment. The equipment I furnish costs me $4,000; it has been in use now 9 years. A cash working capital of $40,000 this year was required to operate that warehouse. That is borrowed money; I borrowed $40,000 and I had $5,000 in it myself. The interest for that money is reflected in my expenses. There are other charges made by the bank against my oper- [fol. 270] ations. I run my interest and exchange item together, because I borrow money from the bank, and it was $1,050 and something. I had something like seven or eight, or maybe ten, skilled employees. The auctioneer is the highest salaried man I have; he made $890. I had just one auctioneer. I had a bookman and clipman; I paid them together $500. There were two of those, one each. Then there was the floor manager; he was paid $600. I had an assistant floor manager too, he was paid $150, and a night floor manager $150. I didn't have but one night floor manager. I had some solicitors; had several weighmen, four weighmen. I paid them on the average of $25 a week. I had office help; had three in the office; paid one of them $300 and another $160 and another $85. All the employees I had in my office come under the head of skilled employees. Most of them reside from Kentucky to North Carolina. One of them was a resident of Georgia. Only one of the skilled help is a resident of Georgia. I employed about 40 common laborers. I had two shifts, a day shift and a night shift. That was necessary because I would have to handle the

tobacco when they bring it in, and they bring it in at night as well as in the day. The gross poundage for 1935 was a little over two million pounds, resales and all, but I don't know the net. I can't recall that. My books for the years prior to 1935 have been destroyed. I have definite recollection as to profits or losses in previous years from my Valdosta operation. In 1930 I made about $1,000—I meant to say a few thousand dollars in 1930, something like $4,000 or $5,000 net profit. In 1931 I lost between $2,500 and $2,600. Lost a little over $1,000 in 1932. I think I made something like $2,000 in 1933; made about $1,800 profit in 1934. Those years I was by myself; since 1933 I have had three partners up to this year, and this year had four. What I mean to say is that in 1933 and 1934 we three were partners, there were three partners, and this year there [fol. 271] were four including myself.

Cross-examination:

I came to Georgia in 1919 and engaged in the warehouse business, and have been coming every year since then. I belong to the Tobacco Warehousemen's Association. I was not at a meeting of that association two or three years ago when they adopted uniform warehouse charges. I don't know as I can remember or recall about that meeting. I didn't get a notice that a certain schedule of charges had been agreed upon; if I did, I don't recall it. I have been charging in my warehouse at Valdosta the same warehouse charges ever since I have been in Georgia; I think I have ever since I started in 1919; I won't be certain about that. I stated that I did not attend that meeting of the Warehousemen's Association; if I did, I have no recollection of that. Maybe I'm charging just a little more now than I was at first when I came to Georgia. Don't remember when I changed my charges and increased them. So far as I know all of the warehousemen did it at the same time. I have known of some warehouses cutting the charges, it was in 1933. That wasn't the thing that called forth a resolution in the Warehousemen's Association fixing the charges and a code of fair practices; in 1934 we had a code of fair practices under the Government. I did know of one concern that cut charges in 1933; it was a concern at Hahira. After they started it, they kept it up the entire season, I think. That took place about the middle of the season. I don't know positively that they kept it up the balance of the

season, but I think they did. I didn't know of anybody in 1935 and 1934 cutting the warehouse charges. I have a warehouse in Kentucky and one in Florida. They are tobacco warehouses; I have three in Kentucky. I haven't any in North Carolina or South Carolina. I have one in [fol. 272] Florida, at Live Oak. The charges in Live Oak are the same as in Georgia. The charges in Kentucky are not the same as in Georgia. They are not a good deal cheaper, the charges in Kentucky are different charges in different localities. In my section we charge a 75 cents to the 100 minimum, and if it brings more the other way, we charge on a commission basis. If you have a load of tobacco that averages above that, we charge on the commission basis on it. It is not regulated by statute in Kentucky. Two of my partners live in South Carolina and one lives in Kentucky. The two who live in South Carolina do not operate warehouses in South Carolina; one of them is operating a house in North Carolina, a tobacco warehouse. I am not interested in that. I run the warehouse in Valdosta. I am supposed to be the head man of it. There were partners down there this year besides me; Foxworth and Wright were there. Foxworth got there the first of June and stayed until the season was over. Mr. Wright got there a little before the market opened and stayed until after the market closed. Foxworth worked in the country until the market opened and he and Wright ran the sale. They were not among the ones I paid salaries; they didn't draw any salaries at all. The name of my warehouse in Valdosta is Nat Smith's Warehouse, they call it. I didn't make approximately between $3000 and $4,000 this year; I made $3,064, but I got two little bills to pay yet. I don't know whether it is over $3,000 or not. I deposited with the Clerk at Macon, $2,846.83. I took in $18,000 and a few dollars gross. I have $3,064 that ought to be in the bank with the exception of some small expense I haven't paid, and in Macon in the Clerk's hands, $2,846.83. That makes something over $5,800. If we are permitted to charge the old rate of charges and get the money in the hands of the clerk, our net profits for this year will be approximately $5,800, and if our charges are those fixed by the legislature, our net profits will be around $3,000. I have my expense account [fol. 273] here. I turned over to the clerk in Macon practically fifty per cent of my net profits, more than that. It was more than 50 per cent, it was nearly 100 per cent. The

net profits would be a little over $3,000 and I turned over to the clerk at Macon $2,846.83. That is practically 100 per cent; it almost doubles it. When one-half of the profits are turned over, it would make only 50 per cent. I think we made something like eight or nine sales, but some of them were not all day at the last. I don't know the number of baskets we sold or the size of each basket. We can tell that from the records I have, where we kept every record of every pile of tobacco. That shows on there where we sold it, but those are the records where we weigh the tobacco and make out the buyer's bill from. That record is in Valdosta. I brought my ledger up here with me. The statement I have here is a statement I made off from the ledger myself. This year I had a fellow named Carter as my bookkeeper. He lives out from Valdosta. Under my previous operations in Valdosta, I had a profit some years and a loss some years. I have had more than just two years with losses. If I had kept what I loaned to the farmers in helping them raise their tobacco, I would have been alright, but as it is I have got over $12,000 worth of notes now that I will take a postage stamp for. Those loans were not charged against my warehouse. The reason I did that was I wanted to encourage the growing of tobacco and to help my warehouse. I lost about $12,000 on bad notes; that was just bad business. The warehouse charges didn't have anything to do with that. But I found out that some of them I loaned to would bring it in in the fall and wouldn't even bring it to my warehouse. In the future I won't loan them any more, unless I know what I am doing. If I do that, it would be a bad credit to make.

[fol. 274] Redirect examination:

The receipts from my business from 1930 through 1935, were not based on the charges passed by the legislature and now under attack here; the rates I was getting was not from the new rates, but was income for those years based on the rates existing prior to the present act of the Georgia legislature. If the legislative rates had been in effect, the loss would have been greater during those past years; the profits would have been less, in fact I would not have made any profit in the last few years. I am one of the plaintiffs in this suit. My warehouse at Valdosta is the Nat Smith Warehouse. I heard Mr. Saunders testify with reference to the factors that make up the difference in the companies' opera-

tions in North Carolina and in Georgia. Those same factors would apply likewise to operations in Kentucky and in Georgia. The same reasons make it more expensive in Georgia than in Kentucky; we have to pay our help more to get experienced help of practically the same kind, in Georgia than I do for operations for from three to 3½ months in Kentucky. I own my warehouses in Kentucky; I am familiar with the rental value of warehouses in Kentucky in my town. Rents are not any higher in Kentucky than they are in Georgia. In Kentucky we rent for from 3 to 3½ months, and in Georgia the season is anywhere from 2½ to five weeks. I said that the cost of skilled help during the marketing season in Georgia was practically as much as the cost of skilled help during the entire season in Kentucky; that's due to the fact that we can get those people out there where they live. The interest rate charged in Kentucky is six per cent; in Georgia it is eight per cent; and I have never paid a dime in Kentucky for exchange. I paid Georgia ¼ of one per cent exchange of every dollar we deposited in the bank in [fol. 275] the warehouse account, even of cash or checks on our town bank or checks on banks we pay money through.

Recross-examination:

The season lasts in Kentucky three to 3½ months. I pay an auctioneer up there for the 3 to 3½ months no more than I do the auctioneer down in Georgia for three weeks; I had the same auctioneer, and he cost me less money for three months' work than he did in Georgia for three weeks. He doesn't live up there, just hired them cheaper, due to the seasons, I reckon, and due to the cost of living. It is not so high, and it is hot. I have to pay them more down in Georgia to get them, and I reckon one reason they ask more is because it is hot. Mr. Cozart operates my warehouse in Live Oak. He is another one of my partners. Three of the partners have to depend on the one warehouse in Valdosta for our profit, for there is only one man interested down there. I have one warehouse in Florida, one in Valdosta and three in Kentucky. I have none in North Carolina or South Carolina. All of those warehouses don't belong to the four partners. The one at Valdosta belongs to the four; that is the only one. Cozart is one of the partners in Valdosta, and runs the Live Oak warehouse, and is interested down there. I don't know as I need four partners at Valdosta. My health has got to where I can't stand up under the sales, and

I had to have somebody. I didn't have to have three partners besides myself, but I sold a man an interest when he sold out his house. My business was making small profits, as I have testified, and some years I had big losses, but I took three more men in with me to share the loss of it. I don't know that I said that was my purpose in permitting them to come in, but it was when I sold it to them. I don't know that they knew it. I did not tell them at the time I took them in that I was losing; they didn't ask me. When I took those three partners in in Valdosta into a losing business, I [fol. 276] didn't tell them I was making money down there. One reason I took them in was on account of my health, and another reason was to help me share my losses. They were not special friends of mine; they were not relatives. They put a little money in the business. The first one the first time put in $1,000, the first two of them. I got the $1,000. The last one put in $700, and I got that. They are still my partners. I leased that warehouse in Valdosta from Mrs. Youles, a Miss Mary Youles. I haven't been leasing it a year at a time; I have leased it twice, five years each time. My time runs out in 1936, after the season. I took in those beneficiaries of mine, took in two in 1933, and this year took in another one. I had two of them in 1933 and 1934. I had losses both of those years, I think. I think the one I took in this year knew that. All of them did not know I had been losing money before they came in, only one of them did. He lived in South Carolina.

Redirect examination:

Neither one of the partners drew any money out of that business as compensation for any service they rendered. It doesn't cost any more for four men to run the warehouse than it does for an individual to run it.

Recross-examination:

My lease only called for the warehouse during the tobacco season. I have no control over it during the rest of the year, only just during the tobacco season. I paid $2,500 for it; I have the lease here. The owners have charge of it for the balance of the year, but the equipment belongs to us four partners. By equipment I mean the baskets and trucks and stuff I have got in the office. The warehouse owned the scales.

Redirect examination:

The floor space in that warehouse is something like about 30,000 square feet, I think. The warehouse is 160 feet long [fol. 277] and goes to a point in part of it, and is cut off by the railroad, and runs at an angle up here and 160 feet wide, including a 12 foot driveway that's off on the long side.

F. W. Brown, sworn in behalf of the Complainants, testified as follows:

Direct examination:

My full name is Fred W. Brown; my residence is Danville, Va., and my occupation is tobacco warehouseman. I have been in that business twenty-three years. I operate a tobacco warehouse in Georgia,—at Nashville, Georgia. I have operated Brown's Warehouse there this year; I operated the Planters Warehouse at Nashville before. That was a partnership; Charles H. McDaniel and myself were the partners. Mr. McDaniel is from Danville, Va. I have operated in Georgia fifteen seasons, since 1921. My warehouse at Nashville is one of the plaintiffs in this suit. I have read the bill and can testify that the statements of fact contained in it are true. They are true. I don't think I have read the amendment filed to the petition. I didn't own the warehouse at Nashville; I leased it from the A. W. Gaskins' Estate for a rental per season of $3,500. I have that written lease in my room, not at the courthouse. I will get it and produce it here. The lease is for one year. My duties in connection with the operation of the warehouse at Nashville is to run the sales. This year I went to Georgia—the first of June. I went to drum the country and see the farmers and advise them and work with them and try to get them to bring tobacco to my warehouse. That was two months in advance of the season. The gross tonnage sold by the farmers in 1935 in my warehouse was 1,982,000 pounds, I think; that is farmers' sales, and I can't recall right now the resales and tobacco warehouse sales handled at my warehouse. My warehouse is the smallest warehouse [fol. 278] in Nashville. There are two other warehouses in Nashville. I am also connected with the Piedmont Ware-

house, in Danville, Va. I heard Mr. Saunders testify on yesterday. The Georgia warehouse I operate is much more expensive to operate than the one in Danville, on account of the short season and we have to pay our men more because that is their summer's work, and we operate in Danville from four to five months, and the Georgia operations and expenses are more in comparison with the Danville, Virginia expense. The Piedmont Warehouse is what I refer to. The size of the warehouse I operate in Georgia is around 35,000 square feet. I don't think I could give the dimensions exactly; I think it is about 150 or 175 feet by 200, something like that. It is made of galvanized iron on the sides and it has a composition roof and a wooden frame building, the first warehouse built in Nashville. I mean that the floors are wooden and all overhead constructions is wood, except the top and sides. A tobacco warehouse roof has skylights in it. The purpose of them is to show the tobacco in the proper light on the floor. It is absolutely necessary to have a good light, because tobacco is a product that changes in appearance under different lights, and unless you have a good light, it doesn't show up to proper advantage and doesn't bring the price it will otherwise or ought to bring. For the last 15 years I have operated in Georgia, the schedule of charges in effect in Georgia has been practically the same that we used last year, except probably in 1921 or 1922 when our charges in Nashville or other charges were different from other charges in the State, at least for different types; I mean they were at least different from the Tifton charges. I had a bookkeeper for eight or nine years and never paid any attention to that and I remember that one time he mentioned it to me, called my attention to the fact that we were charging less than Tifton was charging. During the 1935 season the charges were the same as in the [fol. 279] 1934 season. I am not familiar with that schedule of charges; don't believe I could give them to save my life. They are correct as set up in the bill. I think I can state the charges in effect in Danville, Va. I think they are practically on the same basis as the new charges in Georgia; I think a little higher than the new charges, I am not positive. By new charges, I mean the bill passed by the last legislature under attack in this case. The method of fixing charges in Danville is the same as in Georgia, so much for auction fees, so much for weighing and handling and for commissions; the 2½ per cent commission is the same, and then

we have weighing charges and auction fees just like they do in Georgia. I have made up from my sales slips, actual sales that took place in my warehouse in Nashville and also in my warehouse in Danville, a record of some actual sales. That is for the years 1934 and 1935 in Danville and 1935 in Georgia. From those actual sales figures I cannot give the cost of selling a pile of tobacco in the particular sales in Georgia and in Virginia, because it depends on the price a pound of tobacco would bring as to the charge for the 2½ per cent. commission, and what it figures in there, and the size of the pile. Now, in Danville, we charge 10 cents for each pile, it doesn't make any difference whether it is 10 pounds, 20 pounds or 30 pounds, and then we charge the 10 cents per pile if it weighs 100, if 125 we charge 13 cents, if it weighs 150 pounds, 15 cents, if it weighs 200 pounds, 20 cents, and if it weighs 300 pounds, it would be 30 cents, or fraction thereof. Those Virginia charges are not fixed by statute. So far as I know they are uniform throughout Virginia. I cannot state that positively, but I think so. The sales sheets in my warehouse, are the records from which we pay off the grower and settle our accounts with him I have some of those sales sheets with me. I have the original sales sheets for Piedmont in Danville and the [fol. 280] Planter's Warehouse in Nashville. I have the sales slips for the year 1935 in Nashville, and for 1934 and 1935 for the Piedmont Warehouse. I helped my bookkeeper take off of those sales sheets some typical sales made in both those warehouses. (Counsel hands the witness several slips) These slips represent actual sales made in those two warehouses. Refreshing my recollection from these slips and testifying from my own knowledge, I can state the ratio of charges in these particular sales between the Georgia sales and the Virginia sales. Here's a sale that was made on November 20, 1934, in the Piedmont Warehouse, Danville, Va., for or to Sharp A. Carver, 628 pounds which brought $339.66, the charges were $11.40, or approximately $1.70 a hundred without figuring it. I would have to figure that to get it exact. Fifty-two pounds of that tobacco sold for $22, 164 pounds brought $46, 152 pounds, $62, 76 pounds, $78. 54 pounds $66, 40 pounds $16, 64 pounds $63, and 26 pounds $65. That is better than the average price; that's a good sale, one of our best sales. I estimated the charges per hundred pounds to be about $1.70, just glancing at it and without figuring it out. If the charges had been $12.56

it would have been $2 a hundred. Probably a little better than $1.70, about $1.80. We made a sale in Georgia there on August 7, 1935, for Rowe & Ham, 1650 pounds, and the charges were $20.62, where the price averaged $35 per hundred. That's one of the best sales I had, one of the best sales I made during the whole season. 1650 pounds, with $20.62 charges, makes about $1.25 charge per hundred. I have a sale here on the 7th day of August, T. T. Sirmans, at Nashville, Ga., 1984 pounds, the charges were $25.45; 190 pounds $30, 170 at $31, 21 pounds at $34, 200 at $33, 204 at $34, 222 at $34, 210 at $35 and 194 at $35. That's dollars per hundred; 186 at $35, and 192 at $36. That's a real good sale, one of the best, but didn't quite get the average as the other.

[fol. 281] The average charge per hundred pounds on that sale ran approximately around $1.35. Here's a sale made on the 23rd day of November at Piedmont Warehouse, Danville, Va., November 23, 1934, J. F. Sartin, 598 pounds, charges were $10.03. The price paid for the piles was 114 at $40, 104 at $45, 190 at $80, 126 at $55, 64 at $20. That above an average price for last year: that's a real good sale. The charges per hundred pounds on that sale run right around $1.80, probably a little more, at least $1.80. Those are high grade tobacco sales. Low prices in those illustrations I have given would cut the charges way down. I would say that an average price of around $6 or $7 per hundred would not run over 60 cents charges in Danville, Va., per hundred. I have one figured out here at a low sale I made in Georgia. Now here is a low sale made in Danville, Va., on the 26th day of November, 1934, Piedmont Warehouse, 458 pounds of tobacco sold by W. J. Smith. The charges were $3.12. The gross amount received from the sale was 458 pounds for $51.72; 168 pounds at $11.25, 96 pounds at $11, 80 pounds at $15, 56 pounds at $9, and 58 pounds at $9. The charge per hundred pounds on that would be about 70 cents. I had a low Georgia sale here somewhere, no, I don't seem to have one. I have figured the charges on those actual sales there in Georgia, at the statutory rate which is under attack here, and at the rate prevailing prior to 1935; have figured it both ways. My testimony so far as to Georgia has been on the old charges. From my experience as a warehouseman, I will state that at the statutory rate the charges I have testified to in Georgia in these particular cases would have been lower than

those I have named. In my 1935 operations in Georgia, we sold less tobacco than we did in 1933 at our warehouse, but the season was short. I think we had ten first sales, as I remember, during the whole season, and there was 14 [fol. 282] sales on the Nashville market during the season of 1933. In 1935 we had ten first sales. I was wrong about that; it was 8 first sales is what I had really. I had only one first sale the first week, and the next week three, and the next week four, and that's all the first sales I remember having, except the last two days where there was practically nothing on the market. We had as good prices as we had last year, 1934, but we had twice as much tobacco, more than twice as much. In 1932 there was practically no tobacco, only between eleven or twelve million pounds raised in Georgia, and practically one million sold in Nashville. The prices were low in 1931, 1930, 1932 and 1933; lower than they were in 1935. In the operation of a tobacco warehouse business, the price of the tobacco, the quality of the crop enters into the question whether the warehouse makes a loss or profit, more than anything else. The tonnage does too, of course. That has effect on operations with reference to profit or loss. It has a big effect, because every warehouseman makes up his force of people in November, December or January, or probably a little later than that, and he expects to sell a lot of tobacco and of course if the crop is short, the crop is cut in half, it effects what he gets. The way it effects it is in his commissions. Of course, he would naturally not have as much expense on the floor, not for his floor force, but his main force would cause it to be expensive. By main force I mean his bookkeepers and clerks. A small crop does not increase or decrease the cost of our skilled help, auctioneer, bookkeepers, etc., much. I am speaking for myself. We generally get our auctioneer and clerks early, because you have to hire them early because if you don't you might have to take some you don't want. We hire them by the season. The volume of the crop has no effect on what we pay them at all. If the crop is large, we pay them the same amount as we would if it is small. The cost of common labor fluctuates according to [fol. 283] the volume of the business handled. The larger volume of tobacco handled, the more common labor you have got to employ. In my operations of my tobacco warehouse over the period from 1930 through 1935, inclusive, it has been my effort to operate my warehouse in an eco-

nomical and efficient manner; I always try to operate my warehouses just as efficiently as I possibly can, and tried to operate as economically as I could. I operated Brown's Warehouse in Nashville in 1930, 1931, 1932 and 1933, and in 1933 I was in partnership in Brown's Warehouse, and in 1934 I was with Mr. Strickland on a salary; I did not operate that year. In 1935 I was in it with Mr. McDaniel at the Planter's Warehouse. In 1931 and 1932 I operated individually. I bought the warehouse from Mr. Gaskins in November 1927 or 1928, and after I bought the warehouse and held it several years, I sold a half interest in it and operated it on a partnership basis in 1930 and 1931, but 1932 I did not. I deeded the warehouse back to him in 1931 because I could not pay for it, couldn't meet the payments. By deeding it back I mean that I surrendered the property in exchange for my notes. I have statements of my operations of my business for the years 1931, 1932, 1933, 1934 and 1935. I have these original books with me here, in Raleigh. They were made under my personal supervision; I am familiar with them. I can testify as to the profits or losses for the years I have named. I will have to refer to these statements to do that. In 1931 the commissions received was $9,311.62, the total expense was $9,552.56, making a net loss of $230.94. I had arrangements with my partner that I was to get $1.00 per 1,000 for operating the business. I operated it as manager, and I think I drew out of the business $600 or $700. I did not get my full salary, which would have been something like $900. That was per 1,000 pounds. The other partner got nothing at all in 1931; he drew nothing from the expense account. He was not in the warehouse at all; he didn't have anything to do with operating [fol. 284] at all; he was just a partner. He didn't put up any money, of course he went on the notes with me for money we borrowed to operate on. He was interested financially to that extent. The agreement with reference to earnings was fifty-50, after I got my salary of $1 per thousand for managing and operating the business. 1932 and after I lost the warehouse, and I was not able to get anybody to finance me for 1932 until about the first of June, and Mr. Gaskins, who owned the warehouse then, could not lease it, and he agreed with Mr. George Love and Mr. McDaniel to let me operate it on a profit sharing basis. That was about the first of June or first of July, I do not remember exactly, and I hired a force then in midsummer and went

down there and operated that house for that season. I was to be liable for my part of the losses, and participated in the profits. We took in in commissions that year $1,647.06, profit on leaf account $220.52, making a total of $1,867.58, and expenses were $1,571.86, net earnings paid to partners $295.72. I could give the division just like it occurred. In the expenses set up there in the account, they allowed me so much for expenses, something like $150 or $200 for my expenses. That's all I was to get except my part of the profits. No compensation was paid to me for my time and experience and service in connection with that warehouse, except what I got out of the business as profit. Mr. Gaskins owned the warehouse and got ⅓ of the profits, which was $98.57, and I got ¼ which was $76.43 and Mr. McDaniel and Mr. Love got the balance, which was $120.72, making $295.72. Mr. Gaskins did not charge any rent because that was all he got for the use of the warehouse. My decision or opportunity to operate that warehouse came about the first of July, I think. That's my recollection; I may be wrong about that, but it was right in the middle of the summer. My expenses would have been a good many times greater if I had endeavored to organize my operating [fol. 285] force prior to that time, because I would have hired high-priced men, and not knowing what the crop was going to be, I would have hired a full force. I had a full force to operate this warehouse then, but I did not hire them until the middle of the summer; I just had to pick up anybody I could get. The next year, 1933, the commissions were $17,000 and the total expenses for operating the business was $13,553.59. That year there were three of us interested, Mr. George Love, and Mr. C. H. McDaniel, of Danville, Va., and myself. I was wrong about that; B. L. Belcher, Danville, Va., C. H. McDaniel and myself were ⅓ interested. We operated on a partnership of ⅓ to each. That year our profit was $3,446.41. That was not to each partner; that was to be divided equally, ⅓, my share being approximatly $1100 or $1200. In 1934 I operated on a salary. I worked for Mr. Strickland in 1934 on a salary of $750 for the season. I was assistant sales manager, and assisted on sales. I worked about two months, from about the middle of June, I think, until the market was closed in August. Before the selling season opened, I worked the country, went to see the farmers and solicited tobacco. In Georgia, in drumming and soliciting tobacco, practically

every farmer that you go to see wants you to go to his field and look at his tobacco, and go in his pack house and look at the tobacco there and go to his curing barn and advise him what you think best for him to do about pulling his tobacco, curing it, packing it up and getting it ready to take to market, and you have to take up a lot of time with each one. I don't know whether that is the customary procedure in drumming tobacco, or not, but I think so. I always did that. The total receipts for 1935 were $18,883.40, total disbursements $17,146.11, net profit was $1,747.20. That was under the old charge, and included in the disbursements is the amount we paid Mr. White, in Macon, $3,261.19. Generally speaking the 1935 season was regarded by me as [fol. 286] an unusually good season in comparison with the previous years. My answer is based on my experience as a warehouseman. The expense items I have testified to and the operations I have described are actual expenses paid out in the ordinary course of business and are proper and just reasonable expenses. That statement is based on my experience as a warehouseman for the number of years I have testified to. In 1931, I did business with three banks, and I borrowed from one bank $25,000, from another bank $7,000, and from another bank $2,500; from the Bank of —— $25,000, from the United Banking Company at Nashville $7,000, and from the Farmers & Merchants Bank at Lakeland, Ga., I borrowed $2,500, and checked on all three of those banks. That amount of money was necessary to operate my business for 1931. I don't remember about the working capital for the other years. In 1932 I was interested with Mr. George E. Love and C. H. McDaniel, and we both checked on the same account at the same bank; I don't know exactly what they put up. They made the financial arrangements for 1932. In 1933 we brought $10,000 from Danville, Va., and I think borrowed about $15,000 from the United Banking Company in Nashville, that's my recollection. I might be wrong about that, but I know we brought the $10,000 from Danville in cash and had to borrow more from the United Banking Company there to keep from having an overdraft, and of course they require a note and margin on every account you have and on all of the tobacco you have and everything you have got. In 1934 Mr. Strickland financed the business, and he can tell about that. In 1935, we brought $10,000 from Danville, Va., and I think we borrowed about $15,000 from the United

Banking Company at Nashville. In 1935 I rented the warehouse; I have testified what I paid for it.

[fol. 287] Cross-examination:

These are the statements I read from, showing the example of sales in Virginia and in Georgia. When I was reading the details of the first sale in Virginia and mentioned that 52 pounds brought $60, I meant to say $60 per hundred pounds, 60 cents per pound or $60 per hundred. That is sixty cents a pound. I have sold tobacco higher than that in Georgia, but not in recent years, probably ten years ago, I reckon. That sale in Virginia was in 1934, last year. My average last year was pretty close to 20 cents per pounds at Nashville. We sell a different type of tobacco in Virginia. Some grades bring 60 cents or more. Now, for instance, wrappers; we have very few wrappers raised in the State of Georgia. I was not saying that it was all the same grade in that sale; up there we have some wrappers, some lugs, all grades. I imagine that the 60 cents a pound tobacco was a pile of wrappers. They grow very few wrappers in my territory in Georgia. They used to grow right many, but since they have been trying to raise cigaret tobacco there are very few wrappers. I don't know that any wrappers were sold on the Nashville market this season; there might have been. My understanding is that this investigation has reference to charges. I have handled wrappers in my warehouse at Nashville, it has been seven, eight or 10 years ago. They have changed the type of tobacco. When I first went there, they raised heavy type tobacco. For the last six or seven years they have been trying to raise cigaret tobacco and no wrappers. The first list of prices I gave from Virginia were not for tobacco that were all wrappers. Some other grades were in there. For instance, in North Carolina and Virginia they cut the tobacco stalk and all and when they go to tie it and get it ready for market, the lugs are the first cured, then the culls and then the wrappers, and all of them are sold in five [fol. 288] or six piles. In those examples of sales in Georgia, I did not give figures that covered the sale of wrappers at all. That testimony about Georgia had no reference to wrappers. The first example I gave from Virginia did include some wrappers and other types. As a rule wrappers bring a very much higher price. I came to Nashville and

began conducting a warehouse business in Georgia in 1921; I have been in business every year since that time. I have been in the warehouse business for 23 years and am a warehouseman. A warehouseman is just like a farmer; if he makes a failure this year, the next year he thinks he will make some money. I don't think my operations in Georgia since 1921 have been a failure as a whole. I went broke in the warehouse business, and managed to get back and stay in. I went broke in 1931; that was in North Carolina, Virginia and Georgia. I did business in North Carolina one year. I went broke in 1931 in the warehouse business, and I lost in Georgia a small amount of that pile only. The losses that caused me to go broke were in Virginia, North Carolina and Virginia that year. My statement for Georgia shows a loss of just a few hundred dollars for that year. The growing of tobacco as it exists in Virginia has existed since colonial times; it is an old established business. It is my information that there is no statute in Virginia covering warehouse charges. I said there wasn't so far as I knew. (Counsel reads Section 1381 of the Code of Virginia, in which it is stated that on each 100 pounds of loose tobacco 8 cents shall be paid by the owner and a like sum by the purchaser, one-half of which shall be for the sampler and the other half for the proprietor of the warehouse, and there shall be no charges or fees for loose tobacco sold, as aforesaid, but said charges shall be in full for all services rendered with respect thereto, including receiving, unloading, weighing and delivery) That don't apply to us at all. A sampler is a man who works where they sell it in hogsheads. They load tobacco in the hogsheads and when it [fol. 289] comes to a sale of that kind, he goes to the hogsheads and opens them and shows it to the purchaser and sells it by sample. That doesn't apply to loose leaf warehouses at all. The hogshead tobacco I refer to is not loose leaf tobacco, not the same that we have been talking about. I never heard of that statute before; it was not in force in Danville. The charges in Danville are 10 cents per pile up to 100 pounds, for the auction fees. That is the same as the statute in Georgia fixed, I suppose. I swore that the facts set forth in that petition were true; that petition contains the statutory charges in Georgia. I have read the petition. The charges were 10 cents on piles of 100 pounds or less, any pile up to 100 pounds, and then 10 cents

on piles over 100 pounds additional, or fraction thereof, in any bundle or pile. In Virginia the charges for weighing and handling are twenty-five cents per hundred warehouse charges. The only difference in the Georgia and Virginia schedule of charges is that it is 25 cents per pile straight through for weighing and handling in Virginia. I am certain that it is 25 cents per pile, regardless of the size of the pile, for weighing and handling. I don't know which comes first, the warehouse charges, or the 10 cents per pile on any pile up to 100 pounds. I am speaking of Virginia. The way it is here is warehouse charges, weighing and handling, ten cents per pile of 100 pounds or less. That is the same as in Georgia. Auction fees are 25 cents per pile regardless of the size. In Georgia they are 15 cents on all piles of 100 pounds and 25 cents on all piles larger than that. In Virginia they are 25 cents straight through. Here it is right here; there is eight piles and auction fees are $2, 25 cents per pile. Some of them are over 100 pounds and some of them less, that don't make any difference, any size. I am testifying from my recollection and this memorandum in a way proves it. The commission is 2½ per cent on gross [fol. 290] sales. I don't know whether that is the schedule of charges I have operated on in Virginia for all these years or not, but I think the auction fees there have been raised in the last two or three years. I am not positive about that. My impression at the outset was that there was no statute regulating the subject at all in Virginia. I was under the impression that it was by agreement of the warehousemen. I don't know of any statute regulating the sale of loose leaf tobacco in the bright belt; I don't think there is any statute in the bright belt, but they have one, I think, which relates to the dark belt. I am not familiar with it. Our belt is the bright belt. As I recall there has been a slight increase in the weighing and handling charges, or rather the auction fees, and with that exception the rates have been the same in Virginia, I think, ever since I have been there, and are fixed by agreement among the warehousemen and not by law. I have been operating in Georgia since 1921, and am a member of the Tobacco Warehousemen's Association. I have been attending their meetings regularly for the last three or four years. It is my recollection that the first few years I did business in Georgia, the charges were different from what they are now.

It wasn't about two or three years ago that the charges were raised among the warehousemen to the charges at present. It is right hard to tell the year, but I think it has probably been ten years since the charges for warehouse charges, auction fees and handling and weighing were raised to their present level. I don't remember whether we had a warehousemen's association ten years ago, or not. I don't know anything about a resolution being passed, fixing the charges adopted by the warehousemen in Georgia. I don't know of any agreement between the warehousemen fixing charges. I suppose the reason the charges are uniform throughout the entire southern section of Georgia is, they must have found out what each other was charging, because I remember in 1922 or 1923 my bookkeeper called [fol. 291] my attention to the fact that Tifton was charging more than we were, and I told him I didn't want any variation in the markets, that I was not running a cut-throat business. In 1922 I had a schedule of charges and my bookkeeper told me it was different from Tifton, and I immediately came up to the level of Tifton. I don't know anyone else who happened to get caught out that way and who changed their schedule. The fact that I varied the charges a little bit was not due to my fault; my bookkeeper, I think he probably had the Kentucky charges in mind, because he worked there, and they were put in because I did not pay any attention to it. After operating two or three years, he told me he had been talking to the bookkeeper in the warehouse at Tifton, and said our charges were different from Tifton. He called my attention to the fact that we were a little out of line with Tifton; since that time we have been in line. I can't swear that since 1922 every warehouseman in South Georgia has been charging the same auction fees and weighing and handling fees and commissions on sales; so far as I know, it's true. But I heard that a warehouse at Hahira cut his charges one year; that has been several years ago. So far as I know there has been nothing of that kind in the last four years on the part of anybody, with that one exception, and that was several years ago. It was reported that it was Mr. O'Hara at Hahira who came down on charges; I didn't get that from him. The Association didn't take it up; I imagine he corrected it himself; the association didn't have anything to do with it. The association adopted a code of fair practices

this year. They had one last year through the Government. The warehousemen's association is supposed to regulate practices to some extent, but since I have been president of the association, nothing has ever been brought up about charges until last year, and we brought it up last year because of the Government, and the Government held our [fol. 292] charges was fair and allowed us the same charges we had been charging. I took it up with the Government through Mr. Lanier, who was connected with our Code.

I was an officer of the Tobacco Warehousemen's Association at that time, it was last year, 1934. I was on the Code, one of the Code members for the State of Georgia, and then I was a director of the National Warehousemen's Association, and I attended the meetings of those bodies. Mr. R. W. Goodman is the Secretary of the Tobacco Warehousemen's Association; he lives at Tifton. I haven't the minutes. Mr. Goodman keeps books for the Tifton Investment Company there during the summer, during the tobacco season. In the last six years there has been no way in which a tobacco grower could market his tobacco in Georgia except through the warehouses, unless he sells it privately, if he wishes to. I don't know of any market other than the warehouses; have never heard of any. If there was any, I would likely know it. Practically all tobacco, except possibly a very small amount grown in Georgia, only such part as may be used at home or be bought by individuals, is sold through the warehouses. Of course some tobacco is brought in the country by speculators, and then they go and sell it in the warehouses. Ultimately, the market for Georgia grown tobacco is the approximately 44 warehouses represented by the plaintiffs in this case, and they are owned by the plaintiffs or run by them. I don't know of any warehouse in South Georgia other than those which are represented by the plaintiffs in this case. I stated that the facts in that petition are true, and it states that the plaintiffs are all the tobacco warehousemen. The only way in which a tobacco grower in Georgia can market his tobacco is through the warehouses and by the payment of the warehouse charges which are universal in this territory. My general expenses in 1935, amounting to $1,278.04, is made up of various items. [fol. 293] I cannot tell what they were unless I look at my ledger or journal. They were various small items too numerous to put under different heads. For example, we

have to pay for lights and water; that would be a very small item and only for about a month, and then gas and oil the cars use in drumming; that was for drumming and soliciting. I have solicitors, but I did the demonstrating and making contact with the farmers, mostly. My partner, Mr. McDaniel, was in the country all the time too. I charged up those as expenses, for use of the cars and gas. My solicitors each had a car. I haven't a charge over in another account in addition to that for gas. I can't recall anything else that went in that expense right this minute, because there are so many numerous things I can't. The next charge is labor, $1,262.48. I suppose we had during the whole season last year at least 40 laborers. I don't mean by that that I kept an average of 40 on duty all the time, or that it would run altogether up to 40, some discharged and others taken on; I mean during the busy season we had practically 40 night and day. I paid some of them $12 a week, some of them $15 and some of them $20, some 18 cents an hour. I think during the busy part of the season when tobacco was coming in, the force we had night and day working on our floors and in the leaf account was at least 40. There were 14 sales days. I might have used the term sales when I referred to eight days or eight sales; I meant we got first sales. By that I mean we have two sets of buyers and those two sets of buyers go to a certain warehouse at nine o'clock in the morning, and that's a first sale, and then they finish that warehouse and go to the next or second sale; that's what we call the first sale. On other days sometimes we got a second sale late in the afternoon, and maybe might sell an hour. We really had only eight days in which we had the right of way with the buyers. The reason that is true is because the Companies only send us two sets of buyers. That is not at [fol. 294] our request, we would like to have more if we could get them, but they won't give any more for Tifton, I mean to us. Tifton has 2 sets and Valdosta two sets and Nashville two.

Nashville runs a little less than Valdosta or Tifton in tonnage now, but it is one of the oldest and largest markets in the State. The next item is loss on leaf account, $381.07. By that we mean tobacco bought on the floor and resold. We buy tobacco during the season when the price does not come up to what it ought to be, and then resell it. I had a profit on some of it. That is the amount lost on that par-

ticular operation. It is the buying of tobacco by the warehouse and selling it again. Some years we make money on that and some years we don't. We are more apt to have a loss than a profit. We get a profit when the market goes up after we buy. The next item is advertising, $435.65. That is newspaper advertising. We advertise in the Nashville paper, Adel News, Sparks paper, the Lakeland paper and the Willacoochee paper. That's not all the advertising we do; we put signs out and send out letters and have printed a lot of advertising cards, several thousand of those. The only competition we can have with other warehouses, not having any in the warehouses charges, is competition in the courteous treatment and efficient service and quick service to the tobacco growers. That advertising is for that purpose. We have no competition with the other warehouses in the matter of lower price, but simply competition in contacts, kindness, courtesy and service to the tobacco grower. The next item is errors in corrections, $667.26. By that I mean that tobacco buyers are charged for certain tobacco they did not get, caused by errors in handling. There is one item I can call attention to especially. Take the Imperial Tobacco Company, for instance, they carry their tobacco from Nashville to Tifton by truck, and they weigh each pile of tobacco. If there is a loss of over four pounds, they take it off and charge it back to us. If there [fol. 295] is any long, they give us credit for it, but usually it is a loss. There is a wastage of tobacco on the floor, in the handling of it, taking it from one place to another, and in the handling of the tobacco by the assistant sales manager, the man that turns up the tobacco. We get what we find left after the buyers move the tobacco off the floor; whatever scrap is left we get. We call it scrap. Sometimes we pick out whole leaves from the scrap, and sometimes we get pretty good tobacco that way. My statement for 1935 doesn't show what we sold that scrap for last year, for we ran that under the leaf account. We haven't shown the revenue from the sale of scrap tobacco in our income except through other accounts. The total revenue of $18,000 or $19,000 does not include the amount received from the sale of scrap, but that is run through another account and amounts to the same thing. I mean it is run through the leaf account and other accounts on the books, and they have to balance up. My statement for 1935 shows my commis-

sions $18,836.61. The sale of scrap tobacco is not included in that item. This is not the only item of income I have on my account here; I show on the lost ticket account a credit of $199.37. By lost ticket I mean the ticket on the pile of tobacco was absolutely lost and we were not able to find them, so we had to sell the tobacco and credit that account. I got that, and that is in another place on the statement and not in the scrap. I think there is an item of credit there that represents the amount I got for scrap; I think it is in the leaf account. That shows a loss of $67.74. The scrap goes into that account, and that is the loss on the whole account. I know that I couldn't lose on something I picked up off the floor and didn't pay for, but it went to reduce a loss on some other account. I have no item there that specifically shows the amount I got for the scrap, no item that shows only that. I think, according to the best of my recollection, that the [fol. 256] amount I got for my scrap tobacco in 1935 was $1,600. It runs that way practically every year; it depends on the tonnage to a great extent. This year I sold right around two million pounds of tobacco. I couldn't give the approximate tonnage of that scrap tobacco for this year. We sold it for $1,600; sold part of it at three cents and part of it at seven cents; it was quite a tonnage. At five cents average, and it averaged more than that, it would amount to $5.00 for 100 pounds. We didn't gather up 32,000 pounds of scrap off the floor in 14 days; there was not that much of it. That would not be right, for in getting that number of pounds, it was figured at five cents a pound; I said the bulk of it brought seven cents, and a good deal of it brought as low as three. I should say it averaged over 6 cents. I don't think that there was approximately 25,000 to 30,000 pounds even at that figure; I can't figure it up unless I had the weight of the tobacco that brought seven cents. That is not about the average each year, sometimes it runs small and then again large; it depends on the tonnage. There was no special occasion to make it larger or less except the tonnage this year. The amount received for the waste tobacco would depend on the tonnage handled in my warehouse. When the tonnage was approximately two million pounds, the amount I would receive for scrap tobacco would depend on the scrap tobacco and what price scrap tobacco brings. Sometimes I have sold scrap tobacco for two, three and four cents. Of course, with tobacco low, common scrap

is not worth much. The amount of scrap tobacco might be the same, but the price would depend upon the price of the market. I don't sell concessions in my warehouse, and didn't have any there at all in 1935. We don't sell beer in any of my warehouses. They sell coca cola and soft drinks, but we don't rent the concession. We don't sell concessions or give concessions to sell lunches and things of that kind; [fol. 297] we don't have anything like that at all. None of the warehouses do. I got a salary last year. I didn't include any part of my expenses; I did charge up gas and oil to expense. That was not charged up on this salary account here, and was not included in the $4,000. It comes under the head of expenses I explained awhile ago. That $4,000 and some odd dollars is purely salaries paid auctioneers, clerks, bookkeepers, office force and main floor force, not floor managers and weighers.

The next item is rent account, warehouse, $3,500. I haven't the right to use that warehouse the balance of the year if I want to, just for the season. The contract I have is just for one season; it is purely temporary. That's the best arrangement we could get from the estate of Mr. Gaskins. Mr. Gaskins is dead and his administrator or receiver was renting the warehouse, and of course did not rent it but one year at a time. The next item is storage, $5.00, and insurance, $106.30. That was insurance on tobacco. The next is J. C. Lanier, $51.48. That's what we paid him as administrator of the Warehouse Code. We had to pay him that according to the amount of tobacco we sold. That was not put up as a forfeit; we don't get that back, at least I don't suppose we do. I imagine it is to take care of salary and expenses of all his men; if any is left over, I imagine we will get it back. The next item is lost tobacco account, $67.74. I called that leaf account awhile ago. I see it is separated; it is the lost tobacco account. That's tobacco lost that we had to pay for. I had another item for that; we have an item of errors and corrections. That is not a duplication, that — a different account, the way my bookkeeper kept it. The next item is to George F. White, Macon, $3,261.19. That's the amount I sent to the Clerk of the United States Court, representing the difference between the charges fixed by the legislature and the charges I was making last year and this year. That

is the last item. The total amount of the receipts from revenues was $18,638.61. That is the revenue figured on [fol. 298] the basis of the old charges. That is what I actually took in in money. I have several more items of expense here. One is interest and discount, $165.32. That was for money borrowed to operate the business. The next is bank exchange, $932.26. That is exchange on checks drawn on the banks at ¼ of one per cent; and C. H. McDaniel drew out $120. That was drawn out of the business. It is included in the total of disbursements. I subtracted the disbursements from my income in order to get the net profit. We shouldn't charge as an expense an amount one of the partners got. That is an error. The next item is Georgia Warehouse Association, $11.87; that was not fees as a member of the Warehouse Association, it was for telegrams. That item, F. W. Brown, $120.68, ought not to be in there. It was added together and ought to be subtracted from our expenses. The amount we sent to George F. White was not an expense. It was entered that way to show what our profits would be if the legislative charges were made instead of the charges we did make. That is not an expense unless we lose our case. The season in Nashville this year opened on the first day of August and ran 14 selling days, that is, not including Saturdays and Sundays. It closed about the 20th; we closed on Tuesday, some closed on Thursday after we did. It ran about 20 days, from the 1st to the 20th in our case, and from the 1st to the 23rd in other cases; of course we only ran five days a week. I went to Georgia this year the first of June. I came down then for preliminary work. It took me probably three or four days after the 20th to wind up the business. When I left I went back home; I live in North Carolina and do business in Virginia. I don't have a warehouse in North Carolina, and was not interested in one there. I don't make but two markets, Georgia and Danville. I have already been to Danville; I went there about the 25th or 26th of August, right after I left Georgia. I went up there to work the country until the market opens [fol. 299] on October 1st. I do most of my work there just a short time before the market opens. If the Georgia market had lasted for two months, I could have stepped out of one warehouse into the other. There is not so much preliminary work done in Virginia as we do in Georgia. Some

do and some don't. We have two warehousemen there that never go into the country, and they do a fine business. It has been a custom in Georgia ever since I have been there, and the people expect it, and if you don't go to see a man, he doesn't think you want him to come to see you. If nobody did it, that would be a different proposition. We could get rid of it if all the warehousemen in the State agreed to it. I don't think the warehousemen have, either by a positive agreement or by a tacit agreement, fixed the warehouse charges in Georgia. I don't know why we all charge those charges in Georgia, I suppose most of them know what is charged. I suppose you would call that a tacit agreement, to charge the same, I don't know. The preliminary work we do in Georgia has been almost necessary in a way. The Georgia farmers haven't been raising tobacco long and need help. I have been in Georgia since 1921, and they had just started; you couldn't tell any tobacco had been raised in Berrien County when I went there. They raised pretty good tobacco there this year. The amount of tobacco raised in Georgia this year runs around 75 million pounds, I suppose; the final statement hasn't come out yet. I suppose the amount of tobacco raised in Virginia now is something like 200 or 300 million pounds, something like that. The South Carolina market opened this year just a week after Georgia opened. A man operating a warehouse in Georgia can't operate himself a warehouse in South Carolina. That would be true in any kind of season in Georgia, because they run along together. South Carolina started a week after Georgia opened. I think eastern North Carolina opened the 26th of September. My recollection is that generally the eastern North [fol. 300] Carolina buyers come to North Carolina from Georgia. They hurry off after the market closes in Georgia. I don't think that is the reason they have arranged the Georgia market with such a short selling season; I think the fact that the Georgia markets have such a short selling season is due to the farmers themselves; they go ahead and sell their tobacco and close the markets themselves. In spite of all the teaching and preliminary work we warehousemen do, we can't control them about that. We don't control it in North Carolina; we don't control it anywhere. When tobacco is selling good, they rush it. They do it that way in Georgia. I don't think there is

really any difference in the mental attitude of the farmer in North Carolina and in Georgia. You can't control the companies or the farmers.. The companies will send the buyers there as long as there is any tobacco. I mean the buyers will stay in Nashville until all the tobacco is sold, and I have known them to do that and still want tobacco but can't get it. I understand the tobacco association, composed of the buying companies, and other members, fixed the date on which the market opens in Georgia. I don't think the tobacco growers belong to it. The growers have no word in fixing the opening of the market. On our market the buyers and warehousemen got together and found out what their opinion was about when they could get the tobacco sold, and decided that by a certain day the tobacco would all be sold, and they fixed that day for the closing date of the market and announced it as closing day. All of the auctioneers and most of our expert help, our high-price help, came down from North Carolina and Virginia. I don't hardly think that the shortness of the Georgia selling season has been largely due to the fact that they want it short so they can rush back to a much bigger market in North Carolina and Virginia, because I think every man that comes down there would prefer a longer season and [fol. 301] not be rushed to death every night all night long and almost kill himself.

I don't know exactly how long the South Carolina tobacco is going to sell. I imagine South Carolina has been growing tobacco 40 years; growing and selling tobacco similar to that in Georgia I expect 40 years. That market has not always been two or three months long. I operated in South Carolina two years before I went to Georgia, and at that time they sold it in less time. They didn't tie it in bundles, and of course they sell the crop much faster and get rid of it much faster and quicker that way. It took them about a month, or something like that, then. I don't think it hardly took more than a month. Some of the small markets are closing up now, and some of the larger markets will not close up until the middle of October. That would be August and September, two months, and maybe two months and a half. In South Carolina and North Carolina they tie their tobacco. The warehouseman doesn't get as large amount of scrap tobacco, but he gets a certain amount; it drops off. I imagine it is a negligible amount of tobacco; I haven't

operated in South Carolina since I started in Georgia. That is true also in North Carolina. There is some scrap taken up from the floor and appropriated by the warehouses in North Carolina; it is not much amount, but there is right much of an accumulation through the four or five months season. I don't think it compares in amount with the Georgia scrap, because the Georgia tobacco comes in loose, and comes in what we call sheets. The grower brings it in in sheets and dumps it over into our baskets and the baskets are rolled by negro truckmen and put in rows and during the day, while selling goes on, the buyers and warehousemen and the sales managers loosen up the tobacco and inspect it and handle it. In South Carolina and North Carolina they pull tobacco out of the bundles and tear it up right much sometimes; they don't pull it out of the bundles, they pull the bundles out, and some of them or some of the [fol. 302] leaves fall down besides the basket. You take in Georgia, all the companies have men to put their tobacco in sheets, to dump this tobacco in their sheets and tie it up. I cannot say the amount of pounds of scrap tobacco picked up by my warehouse in the year 1935, I really don't know. It brought $1,600 and that varied from three to seven cents a pound, most of it seven cents. Some of it brought more than that. The good tobacco brought more than that, the leaves. We picked out some of that tobacco and sold it separately. We didn't do very much that way, because we didn't have the time to do it. The $250.00 Mr. Saunders testified that he put up, to guarantee compliance with the rules, was not put up with the association. That was under this code that the warehouses all adopted, and Mr. Lanier was administrator, and Mr. Saunders was chairman of the board of governors. I put up $250 also; I got that back. It was really not an expense. The warehousemen in the State, I understand, have been carrying on this litigation seeking to have declared illegal the warehouse charges fixed by the Georgia Legislature. I can't say that it has been primarily through the Tobacco Warehousemen's Association. I didn't start it. I don't know that I can say just exactly who got me to come into the movement fighting those warehouse charges fixed by the Georgia Legislature. Of course we had meetings. The Warehouse Association had meetings. I suppose you might say that this fight is an organized fight by all the warehousemen in Georgia, through the Warehousemen's Association. My expenses

in Georgia in the operation of my warehouse, compared with the volume of tobacco sold in Virginia, are somewhat greater than they are in Virginia. We paid our auctioneer at Nashville this year—I had two part of the time—and they cost me $1,035 for both of them. I had one only a short time. The auctioneers in Virginia are hired and paid by the month, and he is the highest paid man, I suppose, in [fol. 303] the business. I don't remember now what we paid our auctioneer last year at Danville, but it was around $3,000 somewhere; and we sold about seven million pounds of tobacco. We sold more tobacco at our house than was sold in the whole of the Nashville market. The season at my warehouse in Virginia generally lasts until the tobacco is sold. The tobacco was sold more rapidly last year on account of the price than it has been before. I think it was about four months. The average season is about five months. Those auctioneers are tied up with us only about four or five months; we have no claim on them the balance of the year. They can go to other markets. When one serves in Georgia tobacco warehouses and gets $1,000, he can go to eastern North Carolina. I can't say what the average paid to auctioneers there is. The approximate average is right hard to state. It has been fifteen years ago since I worked there in a warehouse. I don't know whether it would be as much as we paid in Virginia or as little as we paid in Georgia. If I made a statement it would be just a guess. I can't state positive for I am not familiar with eastern North Carolina. I don't remember what they paid when I was up there. I didn't pay as high as $5,000. We had a small house and a small market, and we didn't sell so much tobacco. I don't know what the auctioneers get now for similar services they render to me in Georgia, in North Carolina. They have a longer selling season; they would get more for longer work. There is no reason why they should get less. After the North Carolina season closes they go to Kentucky. Kentucky and Virginia in part runs along together. Then they can go to Virginia for part of the season. An auctioneer operating in Georgia who went to eastern North Carolina, can't get into the old belt, but he can go to Kentucky. That is true with reference to auctioneers and clerks and bookkeepers we get from North Carolina and Virginia. That's the main force, auctioneers, [fol. 304] clerks and bookkeepers is the main force we carry down there, and ticket markers. We generally take most

any man we have got in the warehouse that has got good common sense to go ahead of the owner of the warehouse and open up the bundles or piles, because it is not a skilled position at all. It doesn't take any $300 or $400 to pay him with. I don't have to bring him down from North Carolina. It is auctioneers, clerks, bookkeepers and ticket markers that we bring down there. Sometimes they get a job in North Carolina and Kentucky after the season closes in Georgia, and sometimes they don't; they might. We don't have to employ a night force in Virginia to unload tobacco. In Georgia we run full time, or have a night force of men to weigh and unload tobacco, a floor manager, to dump and place tobacco, and laborers to do the work, and we keep them all night long. We keep them only for three weeks sometimes; it depends on the length of the market. We keep the force in Virginia only in the day time for five months. We generally employ about four regular hands as common laborers in Virginia, and pay them by the week, and pick up men when we need them ay 18 cents an hour. Last year it was 22½ cents. This year we are paying them 18 cents in Georgia; I don't know yet about Danville. Last year we paid them 22½ cents in Georgia and in Virginia. I don't know whether we will come to an agreement in Virginia this year and have a code or not; if we do, it might be 18 cents. We sell so much more tobacco in Virginia than we do in Georgia; of course you have more expense in five months up there as against three weeks in Georgia, but you are handling seven million pounds in five months as against three weeks and two million. The warehouse I run in Virginia is owned by the stockholders. I am not familiar with the rental charges of warehouses in Danville at all; I haven't any idea. The warehouse in Danville has always been used [fol. 305] and operated by the stockholders, and we have never charged any rent, and they had to answer to nobody else except themselves. They have to make reports to the Agricultural Department; then they take off depreciation. That is in lieu of rent, I think; I don't know. The bookkeeper looks after that and I don't pay any attention to it.

I imagine it is as much as ten per cent. a year. I have stated how our total sales in Danville last year compared with my sales in Nashville this year; I compared our back sales in Danville of seven million with our total sales in Nashville this year of two million pounds. I don't know positively about the expense in our warehouse in Virginia,

for the bookkeeper looks after that. I can't give the figures to save my life, but they run way up there because of the five month's operation and the handling of a great deal of tobacco. It is very easily explained why, although the business has been growing in Georgia and has been going on in Georgia for fifteen or 20 years, there are no trained auctioneers, clerks and bookkeepers in Georgia. Most of the auctioneers and bookkeepers work in Virginia and North Carolina and live there and work there. They start out and work one season, and gradually work up in their places in the warehouses. They might start in as ticket markers and finally get so he can calculate grades and prices good, and get a job figuring sales on a small market, and then finally he might get to a big market. It takes years of experience, maybe ten or 15 years. I have been in the warehouse business 23 years. I don't think I could be where I am now if I had not had training in that line of business. I did not say I was a bookkeeper or figured the sales; I am a warehouseman. I am not a ticket marker, bookkeeper or a man that figures sales; I said a man could come up that way, and I said a ticket marker would naturally learn that kind of work. It increases his efficiency at quickness in calculation. I don't think any man can go in and figure a sale unless he [fol. 306] has had experience with that. There is something peculiar about the calculating of piles of tobacco on the warehouse floor, from 360 to 400 piles an hour, and I have had men to do all that figuring in their heads and never put down a figure. They are products of the markets and stay in the business. It takes 15 or 20 years to make a man pretty good at that kind of thing, certainly as much as ten years. I make arrangements with my employees from one season to the next season, or early in the year. If you don't do it early in the year, you will have to just pick up anybody you can get. That doesn't result in training some more men; we don't have no time to train men. One year I did pick up men in June or July. I did not have very much tobacco to sell and could make out with anybody. My expenses were considerably less. I knew when I was up against it and could not afford to sell but a little tobacco. The gibberish that an auctioneer puts forth or goes through when he goes up and down the line has been a custom that has been followed, and I suppose it takes training and skill. There is nothing to conceal from the tobacco growers in that part of it or any

other part of it. Nobody knows what the auctioneer says except the buyers and the trained tobacco men, and they don't know what he says or means, except when he takes a bid. That is not the part I value most about an auctioneer. The part of the most value is that he catch every bid and not miss a single bid, and that he watch all the buyers and know when they bid. That is a matter of quickness and alertness, and there is nothing mysterious and magical about it. I can't tell you how long it takes a man in the warehouse, a man of some skill, to learn that gibberish the auctioneers use; I don't know.

[fol. 307] It is just part of the auctioneer's selling; I don't know what it is called. I can't do it. I have been in Nashville since 1921. Nashville is one of the larger markets in Georgia. I think it led the state in sales one year; it has been a great many years ago. Tifton and Valdosta have run ahead of us for the last three or four years, probably a couple of million or several million ahead, I don't remember just exactly. Moultrie comes in there about third place; I don't know where. Nashville is one of the larger markets; we have two sets of buyers like Valdosta, Tifton, Moultrie and Blackshear. There are three warehouses in Nashville. I have been to Tifton; there are four warehouses in Tifton, and four at Valdosta. I have been in Douglas. I am not positive how many warehouses are there, but I think five. All those markets have two sets of buyers. The buyers in Nashville were kept busy all the time during the last two years. I think they sold just as much tobacco as it was possible to sell; I think maybe some sold faster than we did; I think Tifton claims they sold faster than we did. Nashville sold just as much tobacco with two sets of buyers as could be sold if they had had five warehouses. Those two sets of buyers sold all the tobacco they could. When the buyers go from one warehouse to another that interrupts the sales. It takes them, I would say, 10 or 15 minutes. When they quit selling at one warehouse, it takes them 15 minutes to get over to another warehouse and start selling there. If they had plenty of floor space, it would be better to have three warehouses in Nashville than to have five. I think there is plenty of floor space in Nashville to sell all the tobacco that two sets of buyers can buy or be sold. I expect it is true that there are more warehouses in some markets than are necessary. Tifton has four warehouses and Nashville has three,

but they probably run a little bit longer than we do and sell [fol. 308] more tobacco. I think their supervisor claims this year they sold 400 piles an hour. I don't think we averaged more than 360. The fact that they sold more, is not because they had five warehouses, but faster selling. You can sell more tobacco by faster selling. That makes very much difference. The amount we make out of the warehouse depends generally and largely on the price of the tobacco. When tobacco sells high we make money, and if it don't, we lose. I don't know what tobacco averaged generally in Georgia this past year. I haven't seen the last report, and don't know what Nashville averaged, because I have not been able to find out, and won't know until I get the report. I think possibly we averaged around 20 cents; I am not certain about that. When a new warehouse comes into a territory, as for instance in the Nashville territory, that has the effect of taking business from the remaining warehouses; it splits the business up, naturally, and lowers the chance of all of them making a profit. 1935 was a good year in tobacco. I don't think you could make a reasonable profit under the charges fixed by the legislature if every year was as good as 1935. We made a profit this year, but a very small profit compared with the years I have been in the business, the experience we had had, what we had put in the business and the risk we took. We didn't make the biggest profit this year that we have made any year since 1930; we made more than that in 1933. I don't know whether we could stay in business if every year was as good as 1935, or not; I am not sure about that. I think the increase in tobacco prices during the last two seasons is due to the reduction in acreage, the Government control. I think the Government has been trying to stabilize the price of tobacco, but I don't believe they will ever succeed because of the different conditions. My recollection is that Government control plan was started in the fall of 1933. (Counsel reads to the witness [fol. 309] an article from a newspaper relating to conditions in North Carolina, as follows: "The Governor reviewed unsuccessful efforts to persuade Secretary Wallace and his side not to permit increase in acreage as they did last spring. In the first place, he said, he believes that the 21 cent parity, at which they were aiming, was too low in light of the increased living costs"). That's the parity we were discussing, that they are trying to stabilize. It is reasonable to

suppose that under Government control, the price of tobacco will be more stable. I think the kind of tobacco this 21 cent parity has been or will be applied to is what is known as the bright leaf flue cured tobacco. That is the kind of tobacco grown in the border belts, in North Carolina, South Carolina and in the Georgia belt; that's cigarette tobacco grown in Georgia and North Carolina and Virginia.

Redirect examination:

The $1,600 I got for my sweepings is not included in my statement of income shown. It is included in some other account as a credit. It is in my lost tobacco account. The debit on the lost tobacco account was around $1,700. The figure I read out as the expense on my lost tobacco account represented the difference between that credit and the actual loss on that lost tobacco account. The income I received from the sale of my sweepings did not represent any deduction to the amount received by the growers on the sale of his leaf. Tobacco is brought in, weighed and put on our books at the exact weight. When it is first brought into the warehouse, it is taken from the scales and carried on the floor and put out in rows on baskets. The farmer is not allowed to pick up any leaves that might fall in the movement on his tobacco on the floors, he is paid on the basis of the original weight, and there is not a particle of weight deducted from the farmers by what is wasted on the floor. [fol. 310] Now, the buyer does deduct waste, and we have to pay for it if the weight don't stack up. We are responsible for everything, every particle of lost weight the buyer finds, we have got to pay for it, whether it is 100 pounds, 200 pounds, 500 pounds or 1,000 pounds. We pay to the farmer the full price for the weight of it as originally weighed. The price we receive for the tobacco is for the weight shown by a reweighing by the buyer, plus the weight the buyer bought the pile at. That waste merely goes to reimburse us for our loss in selling, the loss we have with the ultimate buyer; it goes to reimburse us for the loss sustained by taking off weight. The bids made between the buyers and the auctioneer are made by different ways. The warehouseman, for instance, he either bids outright or touches the auctioneer with his foot or hand for a bid. The buyers either stands my bid by touching himself or by a gesture or by calling it out loud. Suppose I bid $26 a hundred on a pile of tobacco, and the buyer stands my

bid,—the buyer gets the bid unless I raise it. Some buyers bid out loud and some bid in different ways. The auctioneer watches every buyer; they are the same buyers and he knows them. I don't mean that all of the same buyers go to all the markets; they give Georgia some, and they have some in South Carolina at the same time. I don't mean that they go from one warehouse to all the different tobacco markets in the country. Some of the same, however, do go from Georgia into North Carolina and Virginia. The same buyers go from one warehouse to another in the same town. The auctioneer is familiar with all the buyers, and he is familiar with the way they bid, whether by winking, touching himself or calling the bid out loud. The ultimate sale price is written on a ticket and the farmer has a right to accept or reject it. He is given 15 minutes in which to reject it. The price is put on there in plain letters and his [fol. 311] grade of tobacco is on the ticket. The farmer can reject that in 15 minutes. Sometimes they take longer than that, and the buyer never buys anything like that.

Recross-examination:

The $1,600 I received for the scrap for the year 1935 went into my lost tobacco account. The account is reflected right here on this statement, $67.74. I have it stated lost tobacco account. I have another account or item of loss on leaf. It is $380.07. The leaf account is the tobacco I bought on the sale and resold. The lost tobacco is caused by a company buying and then we can't find a coupon showing they received it, and it is an absolute loss. When we can't find a coupon, we have to pay them. The Imperial Tobacco Company take the tobacco from the warehouse floor and haul it to Tifton to their loading point, 30 miles, and they allow a four pound shrinkage; it is a shrinkage of four pounds to the 100, that is difference. They allow that much shrinkage, and of course tobacco dries out. When it is in pretty good odor, it weighs more. When it dries out, it weighs less. They allow four pounds shrinkage and call it that, and any over four pounds they charge to me. Of course if they find an error in our favor, they give us credit for it, if it exceeds four pounds.

Recross-examination:

That difference when it gets to Tifton may be a partial shrinkage and may be partially due to loss on the floor.

The Imperial Tobacco Company is supposed to have their trucks running as fast as they get a load, and may haul its tobacco four or five or six hours after they buy. It is about 30 miles from Tifton to Nashville. There can be an appreciable shrinkage in tobacco on a journey between Nashville and Tifton. Knowing tobacco like I do, I know there can. Another thing about tobacco is, you can't take a pile of [fol. 312] tobacco up off the floor and reweigh it without losing weight, and at that go right to the scales and reweighing it. If a pile of tobacco stays on the floor all day, it dries out the moisture. It escapes out of the tobacco, and that's going to effect the weight of it. You can weigh it and put it on the floor and weigh it again and it would lose weight; I don't know how much; would say two to four, maybe six pounds. It wouldn't all be gone in about a month. It stops losing when it is carried into a factory and put in a machine. It doesn't take a month for it to reach the factory. The Imperial carries it to Tifton, a loading point that runs night and day. The American Tobacco Company carries their tobacco to Durham, N. C. They ship it on the railroad and not by trucks. It might take a couple of days from the time they take or buy a pile on the floor in Nashville to get it to Durham, N. C. It is a pretty fast railroad and freight. It would be an average of three or four days. When you take tobacco and put it in the car, the moisture does not escape like it does out because it don't get the air. It is protected in the warehouse from rain, but tobacco dries out on the warehouse floor tremendously. The freight cars are air tight practically. They shipped it all on freight cars, just ordinary freight cars, but if you get in one you will think they are air-tight. They are not absolutely airtight, but practically so. The doors fit pretty close. I didn't say that if the American Tobacco Company buys the tobacco and send it to Durham and they weigh it again and finds it has lost ten pounds, we have to pay for it. Sometimes the tobacco companies call on us for settlement and adjustments. They do it where it shows a loss in weight, but I did not use the American Tobacco Company. I said that the Imperial send me a statement to that effect. Nobody in the world can tell what proportionate part of that loss, whether three, four or ten pounds, takes place in the warehouse and what part is due to shrinkage. My [fol. 313] lost tobacco account for this years shows $67.74, and that means that my lost tobacco was about $1700.00. I

didn't pay out within this year something over $1700.00 for shrinkage and loss for tobacco after it was weighed. We paid for farmers' tobacco that is lost and for buyers' tobacco that is not there, which happens right often on the floor in the rush of selling. In other words, a farmer would bring in seven or eight piles of tobacco and place it there on the warehouse floor and the clerks would not identify it properly, or somebody would come along and pull a pile out before it was supposed to go out, and either the farmer or the buyers would lose it, and we could not find it. If it was a buyer and we could not find his coupon for it, which showed he received it, or if we could not show we did not sell it to him or prove he got it, we had to pay for it. With a farmer, we have got to pay that farmer for that pile of tobacco at the price he says was paid him for it on the sale. That is lost tobacco and goes into the lost tobacco account. Sometimes we can show that the buyer got it and then at other times we take it and sell it, because it is regarded as lost ticket tobacco, and as we have paid for it, we are entitled to it. The thing works both ways. That particular item for lost tobacco is a loss to us through the year. I don't think we find about as many wandering bundles or piles of tobacco as we never find and pay for. Here is a farmer that comes in—I will give an instance—here's a farmer who comes in with nine piles of tobacco and we find only eight on his statement. He comes in the next day and says he brought nine to our warehouse, but there aren't but eight on his statement. There is nothing else for me to do but to pay him on an average for that load of tobacco. It was brought into the warehouse and I am responsible for it. The weigher and floor manager make the tickets, and the farmer will swear that he brought nine, and maybe the [fol. 314] weigher will swear he did not. I don't feel right when a man comes in there and says he brought tobacco to my warehouse and I can't find it and that I have not paid him for all of it. If I know the farmer, I take his statement in preference to the ticket marker and the statements of my weighers and floor force. If I don't know the farmer and I think there is any doubt about it and that he is trying to put something over on me, then I won't allow it. I don't know a single instance I didn't do it this season except one. During this season I did business with a pretty high class of farmers, practically all were a pretty good class of farmers. Referring to my lost tobacco statement here, $67.74 is shown

under that item. I don't mean to say by that that this year I got $1,600 for the scraps and that I lost in shrinkage and in weight $1,700 worth. This was not shrinkage and loss in weight. That was the tobacco I actually lost on account I could not find it and show the buyers they got it, and I paid the farmers for it. I have on my books an itemized statement showing the items which support those entries; they are all supported. Of course you might have to go back to the journal for explanations, but they are supported. My bookkeeper kept the books and made the entries. In closing the books, he closed out the scrap account into the lost tobacco account to help take care of this loss.

R. E. LYDDANE, sworn in behalf of the complainants, testified as follows:

Direct examination:

My name is R. E. Lyddane and my residence is Owensboro, Ky. My occupation is tobacco warehouseman; have been in that business sixteen years. I operate a loose leaf tobacco warehouse. My duties are Secretary in charge of the office of Waycross Tobacco Warehouse Company, Waycross, Georgia. That is a corporation. I am an officer in [fol. 315] the corporation,—secretary. I am in charge of the office; I keep the books of the Waycross Tobacco Warehouse Company, reflecting the operations of their warehouse at Waycross, Ga. I don't have any duties in connection with the field work or solicitation work of that tobacco warehouse; nothing but the bookkeeping end of it. I have my books with me, and have a copy of my income tax returns that were made at the time the originals were made. From those I can testify as to the figures which relate to the operation of that warehouse for the years 1930 through 1935, inclusive. I personally made the income tax return for the Waycross Tobacco Warehouse Company, and made the copies I have here of that corporation's income tax returns, at the time the originals were made. It is not a carbon copy; it is a pencil copy. The expense distribution and balance sheets are carbon copies. Our gross income from 1930 for the fiscal year ending in March 31, 1931, was $12,554.01. Our expense was $12,683.34, and a net loss of $129.33. From 1931, fiscal year ending in 1932, our gross income was $7,-

727.38; our expenses $10,341.06, our net loss, $2,613.18. For 1932, fiscal year ending 1933, our gross income was $1,474.07, our expense, $4,072.87, our net loss $2,598.80. Fiscal year ending in 1934, that is for 1933, gross income, $6,676.57, expense $8,686.63, loss $1,621.31. Now our business for this year—of course this is not the end of our fiscal year, and we will have some more expense and possibly some more revenue. So far our gross income has been $16,898.71, and expense, including depreciation—this is depreciation for the full year because the fiscal year ends the business down in Georgia in so far as the use of the tobacco warehouse is concerned—expenses including depreciation, and depreciation is included in all of these income tax returns, $13,372.64, a [fol. 316] gain of $3,526.07. Now, in that $3,526.07 is included $2,111.54 in commissions that we have got with the Clerk of the Federal Court at Macon. That depreciation for those years was taken on about $23,500 of corporate assets, a little more than that. The rate of depreciation was five per cent of $23,600. The corporation owns its own warehouse. The warehouse is 140 feet, 104 feet wide by 340 feet long, 42,560 square feet. It is a frame, iron-clad building. I can't state, with reference to other warehouses in Georgia, our relative position with regard to volume of sales and poundage this warehouse has. This past year this warehouse sold 1,489,000 pounds; that includes re-sales, first hand sales and all sales. I don't think it is one of the largest Georgia warehouses; there are quite a few warehouses larger than ours. I know the original cost of the warehouse owned by my company. The original cost of the warehouse was $21,508.98 and a building that we have there, a residence building that we get no revenue from, however, was $2,092.82. That does not include the land; the land on which the building is located cost $4,401.76. The original cost of the equipment necessary to carry on our warehouse business are: residence furniture and fixtures $631.35, office furniture and fixtures, $353.60. We use that residence for sleeping quarters and such as that during the operating season. The built that house ourselves. The office furniture and fixtures, $353.60, tools $50.17, scales $603.28, warehouse trucks $347.18, baskets $2,123.28. The depreciation figure included in each of the years reflects depreciation on equipment as well as capital assets. This past year we used a working capital of $10,000 to carry on the business of that warehouse. That was borrowed money. We borrowed it

from the Commercial Bank of Waycross at 8 per cent. We paid $674.50 for exchange for the 1935 season. The items that go to make up the total expenses for 1930, are officers' salaries, $3,400, repairing building $1,048.31, interest [fol. 317] $422.19, taxes $811.41, bad debts $21.62, depreciation $1,275.78, salaries and wages—that's other officers' salaries—$3,845.45, advertising $736.65, automobile expense $43.96, freight and drayage $45.30, general expense $7.85, insurance $471.91, light and water $66.52, lost tobacco $168.08, stationary, postage, printing, etc., $59.98, sundries $209.32, telephones and telegrams $49.01. The income account for 1930, fiscal year ending 1931, shows an income from tobacco sales and commission of $11,099.99. Other income that we received was leaf account $1,089.26, incidentals $20.94, refund Federal income tax $13.70, rents $330.12. In that year there was income from the rental of that building for the use of it as a warehouse other than as a tobacco warehouse; that's where the $330.12 comes in. I do not know what that was for; part of that is rent on baskets and rent on shed rooms and rent on the building at various other times throughout the year, when we got $25, $30, $40 or $50 for it. That makes up the item of $300, some odd dollars. The officers' salaries include W. G. Crabtree's salary. He is President and general manager. He leads our sales in selling tobacco. His salary for that year was $1,000. It also includes the salary of William Barron, vice president, who follows behind the sales. His salary was $1,000. Also E. C. Compton; he is the treasurer and he assists me in the office. His salary was $600.00; my salary $800. My duties were principally office work. During the tobacco season my time is not occupied other than keeping the books. That salary is for my entire year's service for the company. There are other duties that I perform for the company except during the tobacco season. During the off season I have got business that has to be attended to during the year for this corporation. I do other things. This warehouse hires an auctioneer. His salary comes here under salaries and wages. We have a book man and clip man. The auctioneer, book man and clip man usually come from North [fol. 318] Carolina and Kentucky. We have the officers and the clip man, who are skilled employees—that's all, other than the ones already mentioned. We have weighers. They

are skilled and experienced men. The one that acts as floor man in the warehouse varies from year to year. We might have one man one year and another man next year. We do hire a floor man from year to year. He is skilled in the business; it takes a skilled man. None of our skilled employees are residents of Waycross or of Georgia. They are all imported for the season of selling tobacco; those floor managers for the last two or three years have been from Virginia. For the year 1930, I don't recall who was our floor managers. If floor managers are skilled employees, why for the last two years we have had Georgia men as floor managers. I don't remember whether we imported them prior to that or not. I don't remember who we had for floor managers over two or three years ago. I expect we had around fifty common laborers on our pay roll this past season. We worked a night and day crew. We don't have a night and day crew every season. It was necessary for us to have them this season because we sold a lot more tobacco than we ordinarily sell. Last year we sold about 300,000 pounds of tobacco; this year we sold approximately 1,500,000 pounds. Generally speaking, the same items of expenses went into our expense accounts for the years 1931, 1932, 1933 and 1934, and also 1935. The total amount of our expense varies from year to year, according to the volume of business. In my opinion as a tobacco warehouseman and bookkeeper, familiar with the accounts of a tobacco warehouse, I think the expense items charged on the books of the Waycross Tobacco Warehouse Company are reasonable and proper expense charges. I am familiar with the interest rates charged in Kentucky. The interest rate charged there is six per cent; those rates are charged tobacco warehousemen for money loaned. There are no exchange rates charged in Kentucky. The ex- [fol. 319] change rates charged in Georgia is one-fourth of one per cent. The exchange on $1,000 would be $2.50. They charged that on our foreign checks, that is, on checks other than drawn on Waycross banks. So far as I know no exchange is charged on checks drawn on our local banks. I am familiar with the warehouse charges in Kentucky. On burley tobacco it is 75 cents minimum, with a two and one-half and 25 cents, 25 cents weighing charge, minimum weighing charge 25 cents up to 100 pounds. The minimum charge is 75 cents as a selling charge. There is a commission on gross sales. There is no auctioneer's fee. There is a two and one-half per cent commission charge and a weighing

and handling charge, and the minimum charge is 75 cents on 100 pounds. You get 75 cents regardless. That charge is not fixed by statute. Burley tobacco is not the only kind of tobacco grown in Kentucky, there are dark air cured and dark fired, too. On the dark air cured tobacco there is a minimum charge of 50 cents and the regular charge is 3-30. In other words, three per cent and thirty cents per hundred weighing charges. Now that 30 cents is based on the average number of baskets. In other words, if a man brings in five baskets and weighs 200 pounds, you charge him for 500 pounds.

Cross-examination:

I live in Kentucky. W. G. Crabtree is the name of the president of this corporation. He lives in Kentucky. The vice president is William Barron, and he lives in Kentucky. There is also Mr. E. C. Crabtree; he is also from Kentucky and is the treasurer of the corporation. The president, vice president, treasurer and the secretary and bookkeeper, who is myself, are all warehousemen from Kentucky. The four officers of the corporation I have mentioned organized the corporation. It was organized in 1925. The four officers own the capital stock of the corporation. It is a corporation owned by the four officers mentioned, and operating a warehouse in Waycross. The corporation owns the warehouse; [fol. 320] the stockholders own the warehouse; of course the stockholders own the corporation. The title to the property is in the corporation. It was organized in 1925 and has been operating ever since then. I gave the results of our operations since 1930. I don't think our operations prior to that time were about the same par with that; I think we had three years in there we made some money. Two years prior to 1931, possibly one, we did make money. In the fiscal year ending 1926, our loss was $2,568.70. That was for the business done in 1925. In 1927 we showed a loss of $2,968.57. Fiscal year ending 1928, a gain of $2,366.57. Fiscal year ending in 1929 a gain of $2,887.81. Fiscal year ending 1930, a gain of $4,487.91. Since 1930, with the exception of this year, we have not shown a profit at all; except in 1935. Since we organized in 1925, we have shown losses in about nine years, and profit in only three. Our losses have been a great deal more than we have made. The corporation has gone into debt to take care of those losses. Right at the present

time the corporation owes $3,000. Up until the opening of this market, we owed something over $4,000. The indebtedness owed for the warehouse season was for the operating expenses and maintenance. Right now the corporation owes $2,000 over and above the money borrowed for operating expenses. When forming the corporation we paid in $30,000. We didn't borrow that, the individuals put it up. We have our property as it was, with the exception of the depreciation during those years, and we owe $2000. We operated this year and every year since we built it. We had that property and had to protect it; not by losing some money *money*, we hoped to be able every year to make money and take care of those losses. In every one of these income tax returns, in the charges for expense of operation, I charged the amount received by the four officers, who are also the four stockholders. The stockholders have received each year the [fol. 321] salaries charged up in the income tax return as expenses. There were two years, last year and in 1932, that the officers only drew $300 each for those years. Those years were 1932 and 1934. The four officers in those two years drew $600. This year they are drawing $3200. In 1934 they drew 65% of $3400. This is the return for 1935, for the 1934 return, fiscal year ending in 1935. This return for 1934 is one of the years in which the officers drew $300. For that year I charged off $1,275.78 depreciation. I do not know that I am smart enough to show with honest methods a loss as the basis on which an income tax return is made by a corporation, so that we will not have to pay any income tax. In making an income tax return for the corporation owned by the four officers, I charged their salaries as deductions because that is a necessary expense in the operation of the corporation. I never made out an income tax return for an individual except my own. The four officers, who were owners of the corporation, got an income every year. I have not made an income tax return for the corporation this year. My memorandum here shows that the officers received this year $3200.00. That is charged as a deduction from our revenue. It is a deduction by reason of the fact that the owners of the warehouse took that much money for their services. If we had made $10,000 net, the officers would have drawn their regular salaries and the corporation would have paid the government income tax with those deductions shown. Whatever was left would have gone to the officers

who were the stockholders, in dividends. All the company makes above its expenses would go to the four men whose salaries are charged off as deductions. The total income for the year 1935 was $16,898.71. Now, that includes the $2,111.54 that the Federal Clerk has at Macon. That is on the basis of the old charges,—the charges we made this year and not the warehouse charges fixed by the legislature, but the warehouse charges the warehousemen have been charging in Georgia. Our expenses, including depreciation, were [fol. 322] $13,372.64; that is, to date. $1,180 depreciation is included in that, and $3200 officers' salary. About $4300 approximately is included in expenses that are depreciation in the value of our property and the salaries or money paid to the officers who own the building. Considering those items as expenses, our net income is $3,526.07. If we do not consider those two items as expenses, our income would be increased by that much. As matter of fact, the corporation nor the owners did not pay out that depreciation. The owners received the salaries themselves. If you add the officers' salaries which we have deducted as an item of expense and depreciation which we have also deducted, we would add a total of $7,906.16, nearly $8,000. I did not deduct from that also the amount I paid to the Clerk in Macon. That does not appear as a charge or as an expense on our statements; we carry that on our records as commissions in escrow. We are carrying it as an asset. It is included in the total amount of revenue. With the officers' salaries and the depreciation accounts regarded as not a legitimate expense, we made this year, our records will show, $3,526.07. By adding the $4,300 to that, it amounted to $7,900. If you deduct one item paid and put in what we consider legitimate expense and eliminate the depreciation, the figures $7,900 would be correct. If the officers' salaries and depreciation are regarded as proper expenses, the net income would be $3,000 and some odd dollars. If you don't regard them as legitimate expenses, our net income would then be $7,900 and some odd dollars. Ordinarily I spent about two months of my time in Waycross; those months were July and August. I go down there in July to get things in shape, to see about ordering various office supplies. Mr. Crabtree and Mr. Barron come down usually a little bit later than I do. Sometimes Mr. Barron goes down with me. They travel

the country and solicit tobacco from the farmers and do [fol. 323] such things as that.

This year Mr. Barron came down the latter part of June and Mr. Crabtree the first part of July. Our season closed in Waycross on August 21st. Mr. Crabtree left on the 21st, Mr. Barron on the 22nd, and I left on the 29th. Young Mr. Crabtree, the treasurer, didn't go down this year. He drew his salary as an officer of the corporation. Mr. Crabtree was not there last year and didn't get a salary; this year he sent a man down there to look after his part of the business, and he assisted me at home in the off-season; assisted me up in Kentucky. This corporation in Waycross doesn't operate in Kentucky, but we can't stay in Waycross and transact business throughout the year. Young Mr. Crabtree assisted me with anything that might have to be done for the Waycross Tobacco Warehouse Company. For instance, this year we have got to get up a list of all those names that we are holding these commissions for, for their account, so that when the case is over if we have to charge like the legislature said, that has to be returned to them. Possibly that is the only thing we will have to do. Mr. Crabtree and I are interested in a tobacco warehouse in Kentucky, but our market doesn't open until after the first of December. Mr. Barron is not interested with us up there in the tobacco warehouse business; the Crabtrees and I are. After we get up there, we do whatever is required to be done in the tobacco warehouse business. We operate up there with a corporation. We have two corporations, Owensboro Tobacco Warehouse Company and Owensboro Loose Leaf Company. We operate both of those warehouses. I think one reason that the tonnage this year was so much more than it had been in previous years at our tobacco warehouse in Waycross, was the fact that the Chamber of Commerce in Waycross appointed a committee to solicit funds to bring tobacco to Waycross. That had something to do with it, I am quite sure. I can't say that I am familiar with the country around Waycross. I know that Blackshear is about nine or ten miles to the Northeast of [fol. 324] Waycross, on paved roads. There are three warehouses in Blackshear, I think.

It is one of the largest tobacco warehouse markets in South Georgia. I don't know how much tobacco Blackshear marketed this year. I would think they marketed a great deal more than 2,000,000 pounds. I should say that

Blackshear is in the middle of a very fine tobacco belt. I can't say that between Waycross and Valdosta they grow hardly no tobacco at all until you get close to Valdosta; I know lots of tobacco is grown around Valdosta. Valdosta is sixty-four miles from Waycross, I think. We get tobacco in our warehouse in Waycross from the road leading from Waycross to Valdosta. I forget the name of the little town down there; I am not familiar with that country. I don't know where the most of the tobacco that came to our warehouse came from. Our warehouse is known as the Waycross Tobacco Warehouse Company. The 203,034 pounds the report gave us for last year, 1934, is first sales. I imagine that is the amount of tobacco we received. The Farmers Waycross, last year, got 294,500 pounds; I think they got about 1,250,000 this year, including resales. The market in Waycross jumped from about 500,000 pounds last year to something over two million this year. I account for that, to a certain extent, by the good citizens of Waycross getting out in order to make tobacco come to Waycross and make a good market for it here, and getting out and going to work, but to what extent I cannot say how much. The largest amount we lost in any year was approximately $2,500. The total amount of losses exceeds our profit considerably. I account for the fact that we only owe $2,000 because the depreciation largely accounts for it. As matter of fact our income tax returns show a loss which is a book loss. It does not show a money loss to the stockholders other than in the depreciation of the building; not a cash loss in money. It was an income tax loss on the basis I was authorized to make an income tax return to the Federal Government. [fol. 325] In 1935 we operated fifteen days and had one set of buyers. I can't recall how many days we operated in 1934. We had one set of buyers in 1934. Two sets of buyers on a large market where tonnage is heavy can sell 500,000 pounds in one day. If those figures from the Department of Agriculture for last year, 1934, are correct,—if last year Waycross sold only a little less than 500,000 pounds, it would not justify a market in Waycross if they were going to keep that up all the time. It hasn't been that way all along except this year. Last year wasn't our poorest year; the poorest year was in 1932. I think 1933 was a good year and there were two or three good years, I don't recall, prior to 1930. If the buyers ever threatened to withdraw from the Waycross market because of the small

tonnage Waycross received, I never heard of it. The reason the citizens became so active in soliciting the business was because they wanted to make Waycross a bigger tobacco market. The income tax return of our warehouse for the fiscal year ending 1930 shows the salaries paid to officers in the year 1930 were $3400, and the depreciation was $1,275.78. I have not charged, anywhere on our income tax returns, any rent for this building. In the year 1931, fiscal year ending in 1932, the compensation of the officers was $3,400, and depreciation was $1,275.78. I took as depreciation every year, five per cent on the building, as an expense in the operation of our warehouse. There are some items in there of depreciation besides those on the building and some on the other building. On the return for 1931, I have depreciation from April, 1925, accumulative depreciation on the frame residence, $627.84, and on the warehouse a depreciation of $6,452.70. That is not charged out in one year. That is also accumulative depreciation. That is depreciation charged at the rate of 5% per year. In other words, if the cost had been $1,000, it would be the same as if you were taking 5% of it for the first year, which would [fol. 326] be $50.00, and your income tax returns for the next year should charge that off. As that had not been done in previous years, we charged five per cent, or $50.00 on the thousand for that year and for the five years it would be a total of five times that, or for two years a total of $100.00. I also have depreciation for the furniture and fixtures in the residence, and the other items are for tools, fixtures and trucks, etc. The total depreciation for the year 1931 was $104.64 on the residence, $1,075.45 on the warehouse, $35.36 on the office furniture and fixtures, and $60.33 on the trucks and tools, or trucks and scales. That makes a total depreciation of $1275.78. For the year 1932, ending in 1933, we gave the officers only $300.00 that year. The depreciation charge was $1,275.78 and the total deficit according to our income tax return, or loss was $2,598.80. The year before that, 1931, shows a loss of $2,613.18. Two years before that, in 1930, there was a loss of $129.33. The year 1933 shows a loss of $2,010.06; the compensation to officers in 1933 is put down at $2,210.00 and the depreciation is the same, $1,275.78. Those two items added together and subtracted from our expenditures or expenses would show a profit rather than a loss that year. The income tax return for 1934 shows a small compensation to our offi-

cers of $300, and shows a deficit of $1,621.31, and depreciation is $1,275.78. Since I have been in Georgia, I have been a member of the Tobacco Warehouse Association of Georgia. I have never attended one of their meetings; I believe I did attend one this last season. That was a meeting of warehousemen. Several years ago, I don't remember just how long ago, there was some revisions of the charges made by the warehousemen. The revision was upward. That has been since I was operating in Georgia, since 1925. Prior to that time the charges were less and there was a revision made by the Association upward and so far as I know that has been observed ever since. There [fol. 327] was a provision in the Federal code forbidding the warehousemen from going out and hauling in the tobacco for their customers. I don't think it was adopted by the warehousemen's association before the Federal code adopted it. Indirectly, I suppose we contributed to hauling in the tobacco for the growers through the Chamber of Commerce fund. They did that with that fund. I don't know how much was subscribed for the purpose of hauling in tobacco; we contributed $750 to the fund. The amount is included in our expense. I don't know how much was raised in Waycross for that purpose, but I think in the neighborhood of $5,000. Very likely that was one of the causes of the increase this year. That was not in vogue last year; whatever benefits we got from that sort of thing, we got it this year. I don't know whether the practice of sending out and hauling in tobacco obtains in any other locality in Georgia, or not. I haven't a duplicate income tax return for the year 1935, but I have an itemized statement of our expenses up to and including August 31. On this statement is advertising $132.15, automobile expense $150.16, short weight tobacco $55.95, error account $15.18, freight and drayage $809.92. Now that includes that $750.00 we donated to the Chamber of Commerce. We just charged that to freight and drayage because we thought at least the major portion of it would be used for that purpose. Then we have interest and exchange $1,020.02, fire insurance $658.20, tornado insurance $175.00, liability and compensation insurance $140.82, light and water $58.87, lost tobacco $375.54, building repairs $206.12, officers' salaries $3,200, auctioneer $480, attorneys $200, clerical $951.75, solicitors $410, floor wages $2,276, stationery, printing etc., $114.27; sundries $343.93, taxes $346.72, telephones and tele-

grams $21.95, traveling expenses $50. That makes a total of $12,192.55. In this statement I have $3200 as salaries for officers, and $480 for an auctioneer. That is not duplicated in our wages. We received something for the waste [fol. 328] tobacco gathered up from the floor each day. I don't know how much we obtained that way this year. I don't know how many pounds; we throw all of our floor sweepings into our leaf account. The leaf account appears here on this statement; our leaf account shows a gain of $2,942.68. The tobacco we purchased, together with the floor sweepings, brought that much more than we paid for it. We handled our floor sweepings and profits on resale of tobacco we bought together, and it amounted to $2,942.68 above our expense or loss. We kept our short weight tobacco and lost tobacco as separate items. The lost tobacco that was taken off by the buyers was $375.54. That is the actual amount, the actual loss on lost tobacco. The amount we paid to the tobacco growers for lost tobacco would be included in that item, but most of it I am pretty certain was paid to the buyers. Several times there was a shortage where they did not get full weight due to loss or shrinkage. We took up from the floor a certain amount of waste tobacco that we call sweepings; that was an asset. We also bought tobacco during the year that was left on our hands by bidding more than the buyers were willing to bid, and as a result we purchased it. Those two items are shown together, and show a profit of $2,900 and some odd dollars. I heard Mr. Brown's testimony this morning, where he showed a loss as between those two items. I will have to get from my ledger the names of the clerical force who received $951.75. We had a Mr. Lanier; he was the book man; he was the man that followed the sale. We call him a clerical man; then there was Mr. Mason, he was the clip man. Mr. Lanier was from Greenville, N. C., and Mr. Mason from somewhere in Kentucky, although he was in Georgia. Neither of those gentlemen were stockholders or partners interested in the business. We carry some others of our skilled men as clericals, and also our scale men in [fol. 329] that way, and we had two men writing checks, one man writing checks and another man taking off commissions. The laborers which cost $2,276, embrace common labor and includes common labor and floor managers. A floor manager is not called a laborer; we call that floor wages.

Redirect examination:

Another element other than the Chamber of Commerce's activity in behalf of the warehousemen in Waycross, that increased our poundage for the 1935 season was the fact that there was a larger tobacco crop than usual, and various markets were congested and all those things were in our favor. 1935 was an unusually good year in comparison to other years in Georgia tobacco. That was true in production, and we got our share of this increased production. If the rates prescribed by the Georgia legislature had been in effect for the previous years I have testified about, there would have been considerably more losses, and in the years that we made profits, we would have had less profits and perhaps losses.

Recross-examination:

I don't think tobacco warehouses are extravagantly operated, in paying those clerical men and auctioneers and bringing them down from North Carolina, and other conditions under which they are operated in Georgia. The warehousemen have reduced what they have been paying their auctioneers and every other employee along the line, the clerical force and all have been getting less for the past several years back. I don't know just how far back; I know we have paid the auctioneer $1,000, and we can't do it now by a long shot. This year we paid him $480. I do't recall that any of the other warehousemen testified that they paid $1,000 for an auctioneer in Georgia this year; if they did, I did not hear them. He is usually the highest paid employee we have in the warehouse; he gets more than any of those [fol. 330] employees. The reason we pay our president, who is floorman, and our vice president more than we pay our auctioneer is because they are experienced tobacco men and it is their business, their livelihood. They have got their money invested in the business and they come down here at extraordinary expense on themselves before the selling season opens, and the warehouse doesn't pay their living expenses while they are here. With us, the auctioneer is the highest priced employee; I don't know about the other warehousemen; I cannot say about them, I am speakoig about ourselves.

FRED W. BROWN, a witness for Complainants, recalled, testified as follows:

Cross-examination:

I testified this morning that we had an account on our books of the amount we paid out for lost tobacco for the buyers and for the farmers, and the amount we received for the sale of waste or scrap tobacco. I subtracted the amount received from waste from the amount paid out for lost tobacco, and it shows on this statement as a lost tobacco account in the amount of $67.74. It is on page 105 of the ledger. He has it loss and gain, but it is the lost tobacco account. On our journal here, page J-74, we have an entry on August 3 to L. & M., 153.86. It is on page 74; I reckon the "J" refers to the journal. L. & M. means Liggett & Myers. He has it here, Imperial. That was for tobacco which they took off our bill which was charged to them. On August 3rd, on the same page there is an item of $40.50 to Wright. That must have been a pile of tobacco that was charged to them which they did not get, or we could not show a coupon for. I don't know that to be a fact, but I am pretty certain that is true. That's what it ought to be. On pages 74-75 there are several items charged there. On the credit side there is one on August 3rd L. & M., $86.64. They were charged back with a pile of tobacco charged to them, [fol. 331] a pile of tobacco probably they had taken off and that we found a coupon for. We would render them a bill every day, and if they would fail to get a pile of tobacco, they would take it off their bill, and it was up to us to show a coupon or receipt for it. There are several items there, and in my opinion they represent in every instance that kind of transaction. On Journal, page 77, there is an entry on August 6th of $163.33. It doesn't explain that entry here. The entry on the ledger, 105, is loss and gain account $163.33. It doesn't explain that entry, but it is most probable that it was lost tobacco, lost ticket tobacco. It is marked resale. I don't think that is some of the tobacco we bought and then resold that we got $163.33 for; that would have gone under the leaf account, a separate account. It is right here on the journal like it is here. If it is tobacco I bought, it ought not to be shown on this loss and gain account. If it is tobacco that had lost tickets on it, it might be that account. That would be a resale,

because it had been sold and no ticket was on it to identify it. We just resell it and give credit in that case to the loss and gain account, or really the lost tobacco account, or lost ticket account. On page 81 of the journal there is an item on August 8th, of $1,357.91; it is shown as a credit. That could be tobacco that had the tickets off. I did not mean that at all; that was probably tobacco that was taken off by the companies of my bill on one day and added back the next, and I think that probably is the case. For instance, they get a bill today and may leave one-half dozen piles of tobacco on the warehouse floor until the next day. They will take that out of my bill and add it back on the next day's bill and send us a slip notifying us that this tobacco is added back. If that is it, there wouldn't be a corresponding debit for that on the other side of our loss and gain account; they [fol. 332] don't make any entry whatever when they report tobacco short, because we probably don't have time to look the coupons up to see whether they got the tobacco or not, or it may be four or five days before we get to it and figure that, and by that time they have got the tobacco out of the warehouse and added it to the bill and notified us they have added it. Very often that is the case. On page 52 of the journal, we have on August 20th, scrap account "S-Account", $1,609.79. That is not on page 52 of the journal, that was transferred from the ledger entry closing up one account and to another, from page 52 of the ledger; closing out that account and putting it in the loss and gain account. I made out that trial balance myself and it was done simply for the purpose of closing out one of those accounts he had because it was not necessary to keep all those accounts. I used the old 1930 book which I had and you will see it under the year of 1935. I can turn to these books and give the items making up the general expense account of $1,274.84. I can give some of the items and some of them he has not put any explanations opposite the amount. He deposited with the Georgia Power Company $25.00 for lights, and I see he has got $125.00 we paid the city Civic Club for advertising, marked there $125.00. The Charlotte Bag Company, 100 sheets, $21.00; South Georgia Power Company, ice, $8.00. The gas and oil account is $23.40; we haven't a gas and oil account elsewhere in our statement, it is run into the expense; we haven't any separate gas and oil account. There is an item on August 5th, church, $1.00. We subscribed to

the church over there; we have to subscribe to everything that comes along, churches and schools. That was both policy and piety. That item on the journal, page 2, of $213.15 is amount paid to Nashville Herald for advertising, for stationery, checks and buyers bills. A great deal of this is for stationery. We buy our buyers bills, farmers statements and checks from them, and give them all the business [fol. 333] we can along that line. That is for $215.13. On page 87 there is an item of $157.50 for sheets. That's to the Nashville Grocery Company for sheets, tobacco sheets, bought and loaned to the farmers. We haven't got a sheet account there at another place on the statement; we haven't any sheet account at all. The two items on page 100, $188.53 and $289.64, which are made up of a great many items of expense; those are items of expense that I paid out myself for expenses for the warehouse. I remember that distinctly, I remember all about that. I paid out both the $289.64 and the $188.53 myself. The item of $177.50 is here. He must have got the wrong page on these journal entries—I have it right here. He failed to put it in the main account and put a mark down here at the bottom of the page where he shows it.

Redirect examination:

Each of the items of expense that I have testified to in this case represent reasonable and proper and just charges against the operation of my warehouse business.

R. A. George, sworn in behalf of Complainants, testified as follows:

Direct examination:

My name is R. A. George and my residence is Mt. Airy, N. C. My profession or business is tobacco warehouseman. I have been in that business either 12 or 13 years, it is one or the other. I have a warehouse in Douglas, Georgia and I have a warehouse in Winston-Salem. Prior to 12 or 13 years ago, I had not operated a tobacco warehouse in other states than Georgia. I have operated a warehouse at Douglas either 12 or 13 years. The name of that warehouse is Growers Warehouse. It is a partnership. The partners are J. H. McLean and R. A. George. I operate a

warehouse in Winston-Salem, N. C.; have operated that five years. The tobacco warehouse business has been con-
[fol. 334] ducted in Georgia 18 years. I was familiar with the beginning of it in Georgia; I was there at the first market that ever opened in the State. I was a buyer at that time. That was at Douglas, Ga. I haven't the exact figures showing the poundage of our tobacco warehouse at Douglas for 1935. They were not available when I left, but practically eight and one-half million. That is not at my warehouse, but that's the market. I haven't the exact figures for my warehouse, but it was practically one and one-half million. That is a considerable increase in poundage over each of the last four years. I run the sale out on the floor of the warehouse; I handle that end. Mr. McLean has not had the training and is not a practical tobacco man, and he looks after the office end and I look after the floor. Mr. McLean is a native of Douglas, Georgia. We own our warehouse there; Mr. McLean and I own it jointly. The warehouse is 200 feet wide by—120 feet of it 250 feet long, and 80 feet of it 230 feet long; that is an addition. I think the floor space in that warehouse figures 42,000 square feet, if I am not mistaken. I bought one-half interest in the warehouse after it was built. The net cost of the house and equipment is between $34,000 and $35,000. I think it was in 1926 that I bought my one-half interest in it, no it was earlier than that, it was in 1922. In 1935 season there was a good crop of tobacco so far as poundage goes; 1935 was an abnormally good year. It was generally a good season for tobacco. You can start out with tobacco in a state where you have the soil and the seasons, and we will take for instance, say 150,000 acres. That 150,000 acres can produce 15,000,000 pounds, or it can produce 22 or 23 million. It can vary that much. I have been in Georgia 18 years and it was one of the best seasons Georgia has ever had. It was the highest crop per acre that I have seen in Georgia in the 18 years since I have been there. It was abnormally good. We cannot hope within a period of
[fol. 335] 20 years to have another crop as heavy per acre as the 1935 crop was. I started in the tobacco business, I will say, about 38 years ago. I have been in the tobacco warehouse business only 12 or 13 years of that time. I am familiar with the financial operations of this business for 1935 and the years previous thereto. My records, of

course, are all in Georgia. I wrote my partner, or wired him, and they got up a statement showing the receipts of our warehouse, the expenses and profit or loss, at Douglas, for 1930 and 1931. We had our bookkeeper do that, and I think possibly that statement is available somewhere. Our book man is in North Carolina, and for 1930 and 1931 they could not find the books, but they sent the income tax returns for those two years. They, of course, follow our books which could not be found. I know that the statement is correct according to our books. Our bookkeeper made the statement. I had supervision of the books, and our books checked out. I know that the books checked out at the end of the season, and so I know practically they were correct. Without reference to those papers, I can state that the operations for 1930 resulted in a small profit to the partners. I don't remember the approximate amount; I cannot give the amount. In 1931 there was a loss of a little over $3,000. In 1932 there was a loss; I cannot give the figures for 1932. My recollection is that the loss in 1932 was a fairly good one. In 1933 there was a small loss. In 1934 there was a small profit; no, we operated our warehouse in 1934, or rather we did not operate our warehouse, we pooled with another house and did not operate our house in 1934. The building stood idle. We received a small profit in our operations in the other warehouse. All of the warehousemen pooled, because the market was bad. We knew we had a small crop and probably that each house would operate at a loss. I had just enough help to take care of the three houses on the market and had just enough [fol. 336] help to keep going. By that operation we got out and by pooling we made a small profit. The Growers Warehouse, The Red Warehouse, and The Soaper Warehouse and the Okay Warehouse were in the pool; three besides mine. That made four in the pool, but we only operated three warehouses; we closed ours. They were all partnerships. The Red Warehouse had two partners, J. S. Bernard and W. G. Vann, in 1934. Soaper Warehouse, I don't know Mr. Soaper's interest, and R. A. Hughes. The partners in Okay Warehouse were Leon Ottinger, F. S. King and L. A. Barker, and the Growers Warehouse were J. H. McLean and R. A. George. I don't remember the approximate amount of the profit from the 1934 operations. We made some money from the 1935 operations;

we made a profit. The approximate amount was $4,400. My books are at Douglas, Ga. My partner at Douglas is in charge of the office end of the business. In the conduct of our warehouse business at Douglas, it was the endeavor of my partner and me to operate the warehouse on an economical and businesslike basis. The expenses paid for the operation of our warehouse during those years were reasonable in amount. I am familiar in a way with the schedule of charges for services of our tobacco warehouse in Georgia for the past 12 years, and am familiar generally with charges for such service, but as to figuring those charges, I cannot. I cannot figure them in North Carolina or Georgia either, never figured them in my life. The charges paid for our services as warehousemen in 1935 were the same charges as were exacted for the years 1930 to 1934, inclusive. I think the amount deposited by our partnership with the Clerk of the United States District Court in Macon, this year, was $2,280. I cannot state that the charges made for services by tobacco warehousemen over all of Georgia are absolutely the same. So far as I know they are, but that is something I don't know.

[fol. 337] The reason such a state of facts exists, is because all sections have a custom, and that it is that, more than anything else. They all just have a regular charge and charge the same, and there is no variation. Markets don't cut, and I think they do that generally. If one market cut against the other, it would cause a fight, and it would cause such a bitter scrap that it would tear up the tobacco business if it were disturbed. Everybody would object to that, the companies, the state and everybody else, I think. It is different from selling goods. A man can cut his goods under another one, but it is never done in the warehouse business. In my lifetime I have never heard of a warehouseman charging different rates. It seems to be an understanding and nobody attempts to do that. I am familiar with the North Carolina charges. They are regulated by statute; they were regulated at the request of the warehousemen. There was nobody forcing it on us and we do not take it seriously. The warehousemen asked the legislature to pass that bill. We don't think it is constitutional, but nobody has ever seen fit to test it. Everybody is satisfied, as I said before. It seems to be a custom in all states

and all sections to have a regular schedule and everybody abides by it. They find it better and it is not good policy to vary it. The volume of tobacco sold in a warehouse determines its profit or loss. There is a great deal more tobacco sold in the North Carolina market than is sold in the Georgia market. For instance, in Georgia I am on one of the larger markets at Douglas. We sold this year 1,500,000 pounds practically. In Winston-Salem, five and one-half million is the lowest ever sold in my house, and from five and one-half million to nine million pounds for the one house, per season and out of one crop. We can sell tobacco per one thousand pounds at less cost in North Carolina than we can in Georgia, quite considerable. There are several reasons why this is true. We don't have to have near as much [fol. 338] common-labor in North Carolina as in Georgia. The farmer in North Carolina picks out and grades and ties his own tobacco and puts it on the floor. He takes it to the scales and from the scales to the floor, and he don't want anybody else to do that. In Georgia that is all done by the labor or the warehouse. And in the second place the market in North Carolina runs practically five months. We hire our help for those five months cheaper than we can hire them to come to Georgia for a short season. I think the shortest season in Georgia is two and one-half weeks; it lasts from that to five weeks. We hire our experienced help per month and per man cheaper in North Carolina. It is cheaper per man than we can get it in Georgia. To start with, I would say that in North Carolina, the farmer and everybody else has had more experience, and we have got a better system and you can systematize in North Carolina and get by with less help and less help can handle more tobacco per day in North Carolina with everybody having experience than you can in Georgia. We don't have a night shift in North Carolina; in Georgia we do. The reason for that is a great deal of the tobacco comes in in Georgia at night. We have to unload at night and we have to keep skilled help and common labor for our night shift. We have no sales in Georgia at night. It costs us considerably more on our financing and exchange in Georgia. In Georgia our warehouse requires about $50,000 working capital. The expense of financing I spoke about is interest on money we borrow and exchange on all the money we pay out. In Winston-Salem we have a pay-off office. We do our own

paying off. The bank charges used to cost us, it was between eighty and ninety cents that it cost us now. We add all of the expenses together and that's what it runs us to pay off. We have no bank charges on it now. We pay so much for our money and the cash costs us 25 cents per thousand dollars. That's what we pay for the cash and our other expenses amount to between eighty and ninety cents. [fol. 339] Between 80 and 90 cents per thousand is what our house in Winston-Salem pays off for. That is the whole paying off cost. We do not pay off through the bank. We have a pay-off office. We get the cash from the bank and carry it to the pay-off office and have a clerk there who pays out the cash. We pay in cash rather than in checks; we write a check to this pay-off office and they cash that check at the bank and we get the money from the bank. Of course our account at the bank is there and they have this money and bring it to the pay-off office. The North Carolina banks have an exchange charge on tobacco warehouse accounts. That exchange for paying off, the highest I know of is $1.25 per thousand dollars, 1/8 of one per cent, and runs down as low as 75 cents per thousand dollars. The interest rate in North Carolina is six per cent. The interest rate in Georgia is eight per cent. In Georgia we pay an exchange rate of one-fourth of one per cent, $2.50 per thousand dollars. We paid eight per cent interest for the money we borrowed in Georgia. We pay this exchange on the bank checks in Georgia; we pay off by check in Georgia. There is one other reason why the operating conditions in North Carolina are different from those in Georgia. We have to do considerable more work in the country in Georgia than in North Carolina. We do considerable more work. That is the way it started; after it was started, it becomes necessary and everybody does it, and your competitor does it. That was started, I suppose, because the farmer needed some advice and help, and in the first years we tried to visit every tobacco grower in our section. He needed help as to his curing and growing and different things. When we went to see him he always wanted information which we were glad to give him because he needed it in taking care of his tobacco, and that was one reason why it was very necessary. After you cure tobacco and take it out of the barn and pack [fol. 340] it down in the house, that tobacco is subject to molds, and if it molds it is practically worthless. It will do

that if you put it in a damp house, especially if it is in high odor and that is the thing to look after. That requires time and expense in connection with the operation of a Georgia warehouse; you have to spend about two months in the country riding day after day in a car. It costs considerable money. I don't only do that myself, but I had several men doing likewise. We do it some in North Carolina, but not near as much as in Georgia. I believe that about covers the differences in operation between the two states, so far as I can think right now. I am familiar with what is known as a leaf account in a tobacco warehouse. That is tobacco the warehouseman buys on his sale. It is a liability if it is figured over a period of years. I think that is true if you take it from a number of warehousemen. Just a few years have I made my leaf account come out. I have lost as high as $3,000 in one year on one market. If tobacco is advancing the leaf account should break even. If it is a bad year and going down, you have got a loss and there is no way out of it. You cannot get rid of it. It is absolutely necessary to have a leaf account because you have to bid on tobacco and you are trying to force the buyers to pay better prices. We do that to try to protect the farmer. That is the most valuable service rendered to the farmer, I think, in the business. That is protecting the farmers and you can make him more money by a few bids on piles of tobacco than in almost any way. It amounts to dollars in the farmers' pocket. That pays him more than anything else you can do. That is the most valuable service you can render him. If our warehouse has the reputation of bringing the highest prices, it gets us more tobacco. In Winston-Salem we get practically all of our checks for tobacco sold the buyers the following day by eleven o'clock. That is not true for [fol. 341] Georgia. We get checks that has to go through clearing; we all get checks out of town so that takes about five days to clear them, and naturally it takes more money. In Georgia we usually get these checks the following day, but those checks have to clear and go out of town to do it. Some of the companies don't give us the checks the following day; some of them don't give us the check for several days. There is a company that never gives us a check until they check our bill at the home office, but in Georgia even after they check the bills they get behind and are several days late with the check. Some companies get behind two

weeks and it is that long before we get a check, and then that check has to clear before we get our money.

Cross-examination:

I first came into the tobacco business in the State of Georgia in 1917; first as a buyer. I was in the tobacco markets regularly each year from then up until the time I acquired my interest in this warehouse. I first said it was in 1926 that I bought my interest in the warehouse, but I changed that; it was in 1922, I think. The business in Georgia was practically new at that time. They had not made much money, but I saw and in my judgment thought the tobacco industry in Georgia was a coming industry and was going to have a good business, and I was willing to go into the warehouse business at that time. Mr. McLean's associates owned the other half interest in the building at that time; I can't say he did. In 1919 they built that house, and he was associated with those who actually built the house. My prediction or prophesy with reference to the industry in a way proved to be true up to 1930. I cannot say it was in a very substantial way; we had our bad years. It has been a rocky road to travel. I don't know of any business of any kind that we do not have a bad year in occasionally, and I don't expect all years to be good ones. We had some satisfactory years up to [fol. 342] 1930 in our warehouse business at Douglas, and we had some unsatisfactory ones, and I had a good deal more work to do than I had figured on. I had a business up the country and it took too much of my time down there. It does yet. My house today is for sale or rent, either one, if I can get 65% of the investment. I would get out today if I could do that. The business I refer to up here is my business at Winston-Salem. It is a fact that since 1930 businesses of all kinds and business as a whole has been depressed, and it has been hard for all sorts of businesses to make money. It is gradually getting better now. The outlook for the future is better than it was, I think. I cannot say it is in tobacco. It is not very bright in the tobacco interests. We cannot hope for any increase in acreage and cannot hope for another year on the same acres with near the amount of tobacco we had this year, and for that reason it looks very bad. It was under control this year. This year was the best year we have had in several

years. As a result of the financial depression and general economic demoralization, tobacco prices for the years 1930, 1931, 1932 and 1933 were low, and they were like all other commodity prices. That very largely effected our income because it was based partly on the commission on sales which helped in the volume of our business. The service we rendered to the farmer in seeing that his tobacco brings a good price is to our interest too. When we were serving him, we were serving ourselves, but when you buy a high priced pile of tobacco you are hurting yourself when you pay the loss by trying to force it up and the buyer quits and stops bidding on it, and you have to take it. Then you have hurt yourself. You don't think about that; that is done to help the farmer. If we don't do that, he would be unprotected. We don't do it sometimes to assist some particularly large farmer or influential farmer; we do that day in and day out, all through the season. What I am [fol. 343] going to get out of that tobacco don't enter my mind while I am running a sale and going up and down the line of tobacco rows all day long; and that don't enter my mind when I go to sell it. I think I am exercising good judgment, or I would not do it. I am trying to build a good business. That pays in the long run. It will ultimately yield a return, and that's the reason I do it. In 1930 the general average price of tobacco was low. I cannot say what the average was. I don't remember what the average was in 1931, 1932 or 1933. I do remember about 1934; I think the average was around 17 cents in Georgia. Some of those years, from 1930 to 1934, it ran below ten cents, 1930, I believe. I don't know what the average sold at my market in 1934 was; as soon as our market closes I leave and I rarely ever get those figures. I have written the State Department several times, but have never been able to get them. I am not sufficiently informed as to the office work of that business to state actually what the scale of fees were that were charged during the years 1930 and 1931; I have never figured commissions in my life. I don't know what the charges for 1930 were; our book inan figures that. I don't know what was charged in 1931. I don't know what the auction fee was for 1932 or 1933, nor the weighing charge, nor any of the several items in the schedule. I did not figure that at any time. I don't know what the scale or schedule of charges were as fixed by the acts of

the Legislature we are attacking in this suit. I know what it figures in dollars and cents. All I am interested in is what the commissions figure per hundred or per thousand pounds. I can usually give that. As far as going into details is concerned, I don't know. I cannot figure it; I think a great many warehousemen cannot; I know I cannot. I was a buyer at one time. It is my recollection that in 1930 my company made a small profit; I won't say that for certain. I don't know what I received as an income and what our expenses were and how we arrived at that profit. [fol. 344] I don't know what our expenses were, or what was charged as operating expenses, or anything of that kind. I don't know anything about the books or how they were made up to arrive at the amounts I have stated; I haven't any of the details on that. The books, as I stated a little while ago, are in Georgia and I have been in North Carolina. I communicated with them in Georgia and the bookkeeper made a statement for that purpose, and he put the books somewhere and my partner was unable to find them when I communicated with him. Here is a statement for this year; that is for 1935. Our bookkeeper in Georgia got up that statement. Some years ago I used to have another bookkeeper. My present bookkeeper is still in Georgia. He is Mr. Walter Youmans; he lives at Douglas, a local man. We found a Georgia man to keep our warehouse tobacco books, we use every Georgia man we can, and this Mr. Youmans is a good one. We only brought three or four men from North Carolina, or somewhere else, in 1935 to help run our business. There is nobody in Georgia that can handle the work of the auctioneer, we hire every local man we can possibly use though. We brought the auctioneer and three bookmen were all the men we imported. We had four book men. 1934 was a short crop year. All four of the warehouses in Douglas were interested in that pool in 1934. We pooled the whole operation and operated as one concern three houses. The crop was small. When we realized that, we knew that we could not operate each house and hire a full force, every one of us, without losing money. We did that to save our scalps without losing money, which we did. We hired just enough help to go all around. When there is a full crop, you cannot do that. It is hard to get the markets together as we did in Douglas in 1934. We got together al-right, but the

town down there raised hell with us. They could go somewhere else to sell it. As a matter of financial emergency for that year, when it developed the crop was short, we all [fol. 345] combined forces and operated three warehouses and had enough to accommodate the public. We gave them splendid service and all made something by pooling our operations and cutting our operating expenses down. We cut them in half. That's what a business man should do if he can. I know it was good judgment, but we got plenty of knocks. That made a difference, it made a difference this year. Here is the statement for 1933 and for 1935. Of course the 1934 statement, Mr. House has that statement, that is the year we pooled. The 1934 statement would be on the book Mr. House has; he is in Kentucky. I did not have time to get in touch with him and get that report. In 1935 our gross commissions for that year was $14,446.41, and the profit on our leaf account was $463.09. Our floor sweepings amounted to $348.23. The basket rent collected was $127.37. The companies paid so much per hundred pounds for the use of our baskets, the buyers I should have said. On the debit side we have here expense $2,832.48 attached. That means what is attached here, there is a list there to cover it. The total expense or debits is $10,401. That includes the item of $2,205.81 which is deposited with the Clerk at Macon. That is gross, what we took in. The difference in the charges is represented by that money which we deposited with Mr. White under order of Court. Our net, including what is deposited with Mr. White, is $4,483.50. That does not include any salary for me, or time, any rent, any depreciation on our house, equipment or anything. That's just what we've got without making any deduction for the use of our property or for services. That note here, J. G. Barker, $369.38 is a note of his the warehouse went on several years ago. He is a farmer friend of ours, loyal to the house, and we saw fit to go on his note. Finally, this year, we had to pay it. We endorse notes occasionally as a part of our warehouse business. We think it is necessary. He was a loyal customer of ours. He was working for the house constantly, and [fol. 346] the house did it, and I thought that was part of the expense. I could not figure it any other way. If you go to details, I do not know what the charges as fixed by the statute in North Carolina are.

All that I am interested in is how much per hundred or per thousand; that's all I figure on. Our book man figures those charges, I do not. Those charges have been in effect a good many years up here; I cannot say just when it began. I cannot say that the other warehousemen and I had an association and got together at a regular uniform scale of charges before that law fixed them; I don't know. I don't know that the charges for warehouse services that were charged by tobacco warehousemen have been uniform in the belts which they operated in in Georgia or North Carolina; I cannot say. I was only on one market and what happened on the other markets I do not know. I can only say that so far as I know, the charges made at Valdosta, Nashville, Moultrie, Adel, Tifton and other markets are the same as the charges made by the warehousemen at Douglas, but I cannot get up and swear to a statement like that because I do not know. I judge that they are all charging the same and that is true so far as I know. I have had no understanding with anybody. I am a member of the association. My organization, or rather I have been a member of the Georgia Association a good while; I don't know how many years. I don't remember how long the association has been in effect. I attend part of the meetings, not all of them. If the matter of charging charges at those meetings and other matters that effected our interests as warehousemen came up, we discussed them. Anybody could bring up anything they wanted to. We naturally discussed the warehouse business as a whole. It was an open meeting for anybody to bring up anything they wanted to. We did put up money with that organization this year to guarantee that we would abide by the rules promulgated with reference to the operations of [fol. 347] tobacco warehouses. I did not attend that meeting; my partner was at that meeting. I don't remember where it was held; I was in North Carolina and I don't remember that I ever asked him. I don't know how much we put up as a guarantee of our performance or that we would abide by the rules and regulations promulgated, because he put it up, I did not. I don't remember what charges obtained in North Carolina before the North Carolina law was passed; when you talk about charges and go into detail, I cannot give details. We all think the law is unconstitutional, but nobody has ever seen fit to test it. If it has been tested in the courts, I've never heard of it. I was not in the warehouse business when that law was passed. My

understanding is, and I am not making this statement just as if I know it to be an absolute fact, although I think that I am right because it is generally conceded. It is generally conceded that the law was passed on the advice of the warehousemen. They wanted it in order to clarify some things it seems, and so that everybody would know what it was. They thought it would mean a great deal for a man to see that law and know what the business was doing. And nobody has ever seen fit to test it so far as I know. I did not apply to the legislature or lobby to get it passed, but nobody fought it is what I understand, and as nobody fought it, it must have been agreeable to everybody. I have abided by it. We are not abiding by it because the legislature passed it, but because it was a custom and we feel like it was all right in that section, and also felt like if anybody tried to charge more or less that they would get in such a scrap that he would have to go right out of business. I think the companies and everybody would object to it, and the other warehousemen would. That would be bad in the warehouse business and it has caused trouble in other businesses. It has demoralized other businesses, so that if any warehouseman started to change commissions it would disturb the growers and owners and operators and buyers and [fol. 348] companies and everybody. So everybody would sit down on him and if he continued, he would be forced out of business. There is no conflict in North Carolina. I haven't heard of them charging differently in Georgia, but I only said I think that would be the outcome. I usually go down to Georgia about three weeks to a month ahead of the opening. Mr. McLean is a local man and lives in Douglas, and I make several trips down there to our warehouse. I go down around Christmas, around the first of March, and then I go down there three weeks to a month ahead of the opening and stay until the market closes. He is not interested in my business up here. It is not our object in Georgia to market the crop and get through with it quickly; we have to take it as it comes. We have to operate and take care of what is brought us. We do not try to further that, in other words. I would use my influence to get a longer season, selling season, in Georgia. I have spent considerable time about that in back years. When I go down there, I know when the season is going to open, that is fixed. That is fixed the last few days in June. I don't know approximately when the season is going to close; nothing is said

about closing. You may have an idea when it will close from the way it sold the year before, and you know that the condition of selling fast prevails, and with that you can figure, and that's all we know. I can't tell within three days when the market is going to close. I can guess at it. I can figure just like any man with judgment in possession of what has happened in the past, and what prevails. I can say, well there is so much tobacco to come, and if it comes on in like it usually does, maybe we will close about such a time. We have to do certain work with farmers in Georgia that we don't have to do with farmers up here. It is not because the farmers up here are better or have more intelligence than those in Georgia. They are new and don't know as much about it. There are a good many people starting to [fol. 349], grow tobacco each year, and they are new. Our people in North Carolina, in my section anyway, have all raised tobacco all their days, and their daddies and their granddaddies and their great granddaddies, a hundred and fifty years. It comes by experience. As time goes on and the industry in South Georgia develops, I think there will be less and less occasion to put that service into our work in Georgia. After a number of years it should run out. It is not practically out now. Here's the trouble. That was started and they looked for the warehouseman and expect him and want certain information every year. It is not a question of what he needs, but if he is depending on somebody and gets the habit, you will get a rule into effect. I spoke of going around after the tobacco had been cured and stacked in the house and giving some directions about what to do when it was in high odor; that is one of the most important things. We are interested in that. You can have a fine crop of tobacco to be cured and take it out of the barn when it is in too high odor and pack it in a house, and there is difference in houses. I have seen tobacco packed in a house where the floor was low down near the ground and that tobacco will mold. You can take tobacco worth 50 cents per pound and pack it down in a damp house right on the floor and that tobacco will mold and will not bring more than over three, four, five or six cents. It is not difficult to detect a condition of that kind in tobacco, but if a man don't know it or don't think about it, it can lose a fine crop of tobacco before you know it. He can lose nine-tenths of the value of that tobacco. Anyone who once sees it too high in odor cannot determine it again; it takes a tobacco man to know

how much odor it will carry; it takes an experienced man. When once a man shows it to another, it is not true that anybody could tell that it was in high odor the next time he saw it. It takes a man a good many years to learn that. I will explain it this way: You are curing a barn of tobacco, you let [fol. 350] the fire go out, say for a day, and that tobacco in there tomorrow will be just as dead—you can take a leaf of it in your hands and break it all to pieces, into scrap. Now you open that barn tonight and it is according to weather conditions in the morning, and perhaps that tobacco will be tough so you can pack it down. If the weather is very damp, say, suppose it should be a rainy day and you let that tobacco stay there up in the day, and it will get too much odor. How much odor is in that tobacco and how much it will stand is a question that it will take an experienced man to know. If it is too hard, the stem will break and the stem will take up a per cent of that moisture to such an extent that it will damage. It takes an experienced man to know how much moisture is in that tobacco. I did not say nobody could do that except a warehouseman. I have observed tobacco in the field, in the barn, in the factory and of course in the warehouse, millions of pounds. I haven't had experience in growing it, but I have seen it in the field and barn, and gone into thousands of barns, many every year. I have not grown a pound. I am interested in a farm that raises tobacco, but I do not go on that farm once in two years. I go to the others, but not to my own. I pay exchange on all the checks issued in Georgia. If it is charged to my warehouse, or a check is drawn on that account, I pay exchange to the banks in Georgia. That is true on money I pay for tobacco sold through my warehouse. We did business with the Coffee County Bank. There was no charge on the checks paid to us by the buyers which we deposited. The working capital we have down there is for the duration of the market. The working capital in North Carolina we keep for a much longer time. It doesn't take any more money in North Carolina. We have to have it available over a longer period because the market runs longer. We pay it some longer in North Carolina. On this statement for 1933, which shows a loss in operations, it appears among the debits that [fol. 351] amounts were paid to Mr. McLean and to me. When I stated that none of the statements showed any payments to us, I was mistaken. Anything in those statements goes; I just did not recall that. That was a profit for that

year; I got confused in my years. It was 1932 instead of 1933 that we had a loss. I think it was in 1930 that the Douglas market sold the largest poundage; that's my recollection. It sold 14,000,000 pounds I think that year. At that time there were five warehouses in Douglas. My recollection is that the Soaper warehouse was built and started operating in Douglas in 1930; I believe 1930 was their first year. I think that in the Douglas territory, two sets of buyers can dispose of the crop in four warehouses in just as orderly fashion as they can in five warehouses. The fifth warehouse in Douglas is unnecessary from the standpoint of convenience and necessity. That fifth warehouse might have been established on the profit motive, I don't know. Somebody wanted a warehouse and built it. There were some parties who wanted to get into the Douglas warehouse business and that's all the explanation I can give. It is just like everything else, competition. They wanted to get in Douglas, and they built a house. The house was not necessary to market the crop. We sold just as much tobacco in four as we sell in five, or could do so. The establishment of that fifth warehouse has the effect of lowering the income of the remaining warehousemen. What business they get is drawn from the other warehouses already established there.

Redirect examination:

The builders of the last warehouse did not consult us as to whether it was advisable for them to go into the tobacco warehouse business in Douglas. So far as I know, I had no right or authority to object to or prevent them from erecting the warehouse, or to prevent them from embarking in that business in Douglas. The pool I spoke of was arranged [fol. 352] in the summer of 1934. I had not made any commitments to skilled labor to operate our warehouse at that time. If we had had all our force hired, we could have entered into the pool, but we would have had to make some disposition of our force. We would have had to have gotten the others to agree to take our force or else we would have had to settle with them on some basis or agreement. We had not made any contracts whatever. We try and usually trade with our force anywhere from February on until April 1st prior to the summer of the year in which we operate. Sometimes we have an understanding when we close. We might not have a contract, but if we want a man, we will

speak to him and tell him we want him another year, and there is an understanding between us. In 1934 we had no such commitments outstanding; those years we were losing money and we did not make any contracts whatever until later in the season for that year. As matter of fact, I had not formed a firm intention to open our warehouse in 1934; I was leaving that open, pending this pool. I had that thought in mind. I knew we would lose money, so really my idea was if we could not form a pool that I would try to lease it to somebody for something. I would have leased it and not run singlehanded with a full force and with that small crop. We lease our warehouse at Winston-Salem. I am not very familiar with the rentals paid for warehouses in Georgia; I can only say on the Douglas market. Compared with other warehouses, the fair rental value of the warehouse we own in Douglas, I would say is $3,400. I base it on this: Ten per cent of the cost of the property. Really it costs more to keep up warehouse property than other property. The rental value would be $3400 per year. There is no other purpose we can put the warehouse to at Douglas, except for tobacco selling. It is closed after the tobacco selling season, and we do not get a dime out of it for any other purpose. In my opinion as a warehouseman, if the schedule of rates passed by the Georgia Legislature goes [fol. 353] into effect, the five warehouses at Douglas cannot operate profitably.

CLAUDE B. STRICKLAND, sworn in behalf of the Complainants, testified as follows:

Direct examination:

My name is Claude B. Strickland; I am approximately forty-two and one-half years old. I was born near Danville, Va., in the country, about 12 miles N. E. of Danville. For the last six years I have made my permanent residence in Winston-Salem, N. C. I was born in the tobacco belt of Virginia. My father was a tobacco grower, and I grew up in the industry from the point of both the grower and within the warehouse, in fact, through it all up to now. I have been identified with the tobacco business from planting, harvesting, sales, and I worked two years for R. J. Reynolds Tobacco Company in the Danville, Va., branch. I was employed by them as an assistant floor leaf house manager, as

it was termed by them. During all those years, I think I have become identified and have become familiar with the tobacco business. I am now engaged wholly and solely in the tobacco warehouse business. At the present time I operate a tobacco warehouse in Winston-Salem, N. C., and during the past two seasons I operated a tobacco warehouse at Nashville, Ga. For five seasons prior to the last two years, I operated a tobacco warehouse at Adel, Ga., and for five years or six years prior to that, at Nashville, Ga. I am familiar with the conduct of a tobacco warehouse business as carried on in Georgia and in North Carolina. Due to the fact that the tobacco business or industry is new in Georgia, there is a practice in Georgia that is not required in North Carolina. First, it was a custom and a practice generally among the warehousemen in Georgia to visit nearly all of the patrons of his warehouse, making personal calls and soliciting business from them, and it is positively necessary and imperative to the successful operation of a Georgia [fol. 354] warehouse that the warehousemen do that now because there are such a large percentage of the tobacco growers themselves who will resent and do resent a person who is operating a tobacco warehouse not coming to see them personally, or having a representative of his business to call on them. If they do not do it, and I have failed in some years, and I lost business like the dickens. I was never in politics. The old idea that they won't vote for you unless you go to see them certainly applies to the warehouse business. I know that a large percentage of the growers won't haul you a load of tobacco unless you ask them to personally, or have your representative to do so. That requires the warehouseman to hire solicitors for tobacco, and to solicit himself. Since I have been in the tobacco warehouse business in Georgia, it has been my custom annually to go into the state and into the territory in which I operate, and solicit business from June 1st, some years June 1st and some years June 15th, but never have I gone to Georgia to solicit business later than June 15th. I come in contact with other warehousemen who operate in that territory, and with their trade men or drummers in my daily operations. So far as I know they employ the same practices that I do, the same customs, in the surrounding territory. I employ some skilled labor, whoever assists me in operating my house, and have a written contract with him, so that he has to report for duty in Georgia under the contract sometimes two weeks

and sometimes as high as two months prior to the opening of the season. Those contracts are not available here, but I know all the contracts from memory. I can make some of them available before the evidence is concluded or when the case is heard before the three judges. This present season just passed, I employed an auctioneer for my Georgia warehouse operations to report for duty on June 1st. The contract of employment entered into with my auctioneer was in *Ben*ruary or March of this year, I think. My skilled help [fol. 355] consists of an auctioneer, a bookkeeper, a floor manager, three clerks, two assistant clerical persons who assist in the office, two weighmen, who weigh tobacco which the farmer brings into the warehouse, and that is all.

Two of my assistant office helpers were Georgia natives. One was a lady who is a resident of Nashville, Ga. She keeps the names and grades that the farmer receives, and sees that the commissions are deducted from his bill by my office and the net check that goes to the grower, and sees that it is the same which goes on my check stub. That is kept on a book I use. I used a type of checks which were made up in perforated form, and it is the lady's duty to keep a record every *s*ay of what went through my office that is paid out to growers. It was necessary for me to import employees other than those I have mentioned, so I could get men who were competent to do those duties and that kind of work. I consider those I imported capable and suited to do the type and class of work they did and which they do. They were fitted for that work because they, like myself, grew up and were raised in a tobacco territory and the work was generally familiar to those people from their infancy on up. They just grow up in it, but more particularly, they studied and equipped themselves over a period of years to fit them for the type of work, which is their life vocation at this time. I operated a warehouse at Adel, Georgia in 1930. I also operated a warehouse at Adel, Georgia in 1931, 1932 and 1933. I operated a tobacco warehouse at Nashville, Ga., in 1934, and in 1935 I operated the same warehouse, which was known by a different name, at Nashville. In 1934 it was known as Brown's Warehouse, and in 1935 it was known as The Independent Warehouse. I haven't the books and records that will reflect the profits that I earned and the losses I sustained during the years 1930 to 1935, both in-

clusive, for I operated a tobacco warehouse at Adel, Georgia in 1930 and 1931, as a partnership with Mr. B. B. [fol. 356] Saunders, whose residence is Valdosta, Ga. He is the gentleman who testified as the first witness upon this hearing. The year 1932 was a very disastrous year for the warehousemen, a most disastrous year, and it was also for the growers. There wasn't any crop much and prices were bad. In order that we might conserve everything, we cut our expense to a minimum, until we hit rock bottom. It was necessary. We all felt it was necessary, and we did it, and I did it myself. What happened for one thing was that during the winter time prior to and during the seed bed sowing, we had a cold snap and it killed out the plants, and killed out the crop and made it impossible to produce and grow tobacco that season. I leased the warehouse known at that time in Adel, Ga., as Strickland's Warehouse, from Dr. C. C. Giddens, or the Adel Ginning & Trading Company, which he owned and was active manager of. He controlled it at that time. I have the records here for my business operation in Adel, Georgia for 1933, because that was for my own personal business. I have the records for that year, no matter how I operated. I have records for 1934 because it was also my private business. I have a record or statement of my operations for the year 1935. I keep pretty closely in contact with my business and did during the years 1930, 1931 and 1932, irrespective of my record. In 1930 I made a small profit, between five hundred and seven hundred dollars. That was my Adel operations. In 1932 I operated at the same place, but not as an individual, but a partnership with another individual there. In entering into this partnership with my competitors for the year 1932, we made a consolidation of our expenses. We went to the folks that we leased from. I went to Dr. C. C. Giddens, the man who I leased from, and I also accompanied one or two gentlemen that were operating other warehouses in competition to me, to their board of directors which was the Cook County Tobacco Warehouse Company, which was a corporation which owned that build- [fol. 357] ing, and we, Mr. R. H. Knott and myself, went before their board of directors and got them to consent to reduce their rent in order that we might stay in business and conserve expenses. They reduced that rent from a

figure of $2,000, which they obligated themselves to pay, Mr. Knott and Mr. Dunn were the lessees, from $2,000 to $700. I went to Dr. C. C Giddens and got him to consent to reduce the rent of his building from $2,250 on which I had the lease. My lease was reduced from $2,250 that year on the building I was supposed to operate, to $700. I went to Georgia in June of that year. The three parties that operated the two houses in Adel that season entered into an agreement between themselves that each of them would pay their own personal expenses, their expenses of operating their automobiles, their board, room and all expenses out of their own pockets, and it was never included or put into the business of the partnership. All legitimate items of expense were not charged up to the operation of the business during that season. The operation for 1932 resulted in a net profit to each of the three partners of between eight and nine dollars each. I operated in Adel in 1933, individually. The result of my operations for 1933 showed a profit of $521.58. From June 1st and June 15th until the close of the tobacco marketing season in Adel, I devoted my time to the operations. I don't recall what time the market opened that season. It was some time about August 1st. During the actual season of selling, I devoted my time to that business. I consider that my time is worth something. Some years that I have mentioned, I charged in a salary for my services, and some years I did not, depending on whether I made a profit or sustained a loss. The maximum amount I ever allowed myself for a salary was $2,000, which is included in my 1935 statement at Nashville, Ga. I am not sure whether I made any allowance to myself for salary for my services and skill for [fol. 358] the prior year or not; my statements will show.

In 1934 I operated at Nashville, as a partnership. I made a profit in Nashville in 1934. I charged in, or had charged in my books a salary to myself of $1,500 during the year 1934, and above that salary I received $5.08. I know that the amounts charged in for salary in any of those years were not more that I was worth to that business. I cannot state whether I could have sold my services, with all of my experience, to other concerns for the same or a similar amount. In 1935 I operated in Nashville, Ga. It was an unusually good season for the warehouse people, very. For the growers it was also a very good season. I made a profit

that year. I received a salary from the Independent Warehouse in which I was a partner, of $2,000, and I received also three-fourths of $3,722.07. I conducted the business, and received from the partnership a salary of $2,000. After that and after all other items of expense were deducted from our gross, I divided with the other partner; I got three-fourths of the net profit from the operation of the warehouse at Nashville, which we operated this season. In 1935 our house in Nashville sold 2,529,604 pounds of tobacco. In all my operations during this period of years, I endeavored to operate my warehouse business economically. My annual operations, both in Georgia and in North Carolina, include in expense salaries, labor, wages, water, lights, office equipment, stationery and supplies, tickets which go on the piles of tobacco to identify them, interest paid to banks for borrowed money, exchange charged by banks for clearing our checks, nails, lumber for repairs, and various other things too numerous to mention. I rented my warehouse all the while, and the rental of the warehouse is charged up each year. I think the rental I paid each year was a reasonable rental for the property employed in my business, except for the year 1932, when my rents were reduced from $2,250 to [fol. 359] $700. That did not bring a fair return to the man who owns the property. The opinion I gave as to rentals was based on my experience as a warehouseman, covering a period of years. My experience has been that it costs approximately 25 to 33⅓ per cent more per million pounds of tobacco sold to operate in Georgia than it does in North Carolina. That is true, because our salaries are higher per million pounds in Georgia than they are in North Carolina; second, because our interest rates per million pounds sold are higher in Georgia than in North Carolina, and third, because it takes much more capital to operate per million pounds in Georgia than it does in North Carolina. It also costs two and one-half times as much for exchange in Georgia than it does in North Carolina. The length of the selling season in North Carolina varies considerably. We have run as long as five months and we have run as little as three months and a few days in North Carolina. In Georgia, the length of the season varies from two and one-half weeks, or possibly three, to five weeks. It lasts as long as there is any tobacco to be sold in Georgia. The market stays open in Georgia and in North Carolina as long as

there is any tobacco to be sold. To illustrate the tendency in Georgia upon the part of the growers to rush the tobacco to the warehouses as soon as the season opens, I will state that this season I sold during fourteen selling days, and I had thirteen sales. I got thirteen sales but they were not all first sales. During one week of that period, I sold one million, six hundred and eight thousand, eight hundred and eighty-eight pounds of tobacco of the 2,500,000 pounds which I sold during the entire season. That necessitates the employment of additional help in the way of common labor and shifts. Because of conditions that obtain in Georgia, we have to employ night shifts as well as day shifts in our operations there. I operate in North Carolina on a large market, and it is necessary for us to keep a watchman while [fol. 360] the farmers sleep, and also a man at the scales in our house, a night weigh man, in order that when a farmer comes in to unload his tobacco he can go home immediately. This man which we call a weigh man can weigh the tobacco and does it, but we do not keep a full night force. That is done in North Carolina for convenience and to take care of emergencies, but we keep no regular night shift. In Georgia, we pay $2.50 for each $1,000 we pay to growers for their tobacco, drawn out of our account with the bank. In Winston-Salem we pay $1.00 per thousand dollars exchange for money paid out for us by our bank. The capital we employ in Georgia varies from one season to another. I have used as little as $25,000 on a season's operation, and I have paid out as high as $116,000 in one day in Georgia. I have employed as little as $25,000 working capital, and I have used as much as $200,000 in Georgia in clearing checks. That does not represent all borrowed working capital. The rate of interest on amounts borrowed in Georgia is eight per cent. I borrow a portion of my working capital in North Carolina. For such amount as I borrow, I pay six per cent interest in North Carolina. I gave the result of my 1935 operations at Nashville. In making up my expense account, I did not take into consideration the amount that I deposited with the Clerk of the U. S. District Court. In figuring my net profit, I have not deducted that as an expense. I paid into the registry of the Court, at Macon, Ga., $4,054.17, to take care of the growers or myself as this litigation might terminate. If I should be so unfortunate as to lose this case, that would not be deducted from the net profit which I have testified about.

That is not included in my statement prior to this, the net profits which I testified to prior to this was net profits, provided this never comes back. If we win the case, my net profits to the partnership will be $4,054.17 more than the statement which I made a few minutes ago. From the stand-
[fol. 361] point of the warehousemen and from the standpoint of the growers, the year 1935 was a most favorable season. It returned a larger yield per acre and a good quality of tobacco, and there was a good market for the growers from their point of view and from our point of view. If the schedule of rates passed by the act of the legislature of Georgia, which is the subject matter of attack in this suit, had been enforced from 1930 to 1935, inclusive, and I had been compelled to confine my rates to the amounts fixed by the legislature, on the whole I would have sustained a loss. I am not prepared to give in percentage the difference between the amount of charges exacted and collected during those years, and the schedule of rates passed by the act of the legislature, now the subject matter of attack, but I will state that it would amount to approximately, in my judgment, during high years, during years when tobacco sold high, it would amount to 15 or 17½ per cent and during the low years it would amount to as much as 30 per cent.

Cross-examination:

I have been doing business in Georgia in the tobacco warehouse business for thirteen seasons, I think. That includes this season. That will go back to 1923; I first went to Georgia in the spring of 1920, but I didn't engage in the warehouse business until 1923. During the years 1923 to 1930, my warehouse business was profitable each year. The losses I have sustained have been in two or three years since 1930. I am fairly familiar with South Georgia and tobacco markets in South Georgia; in my immediate vicinity where I operate, I am. Generally speaking, I am familiar with the Valdosta, Hahira, Adel, Nashville, Tifton and Douglas markets. I think Valdosta is about nine miles from Hahira, I am not positive as to the distance. I think it is 11 miles from Hahira to Adel, and from Adel to Nash-
[fol. 362] ville 12 miles, I think. I think Tifton is 22 miles from Adel, and possibly 33 or 34 miles from Nashville the way the pub-
lic road runs and we usually go when we go to

Tifton. I cannot state, definitely, how far Douglas is from Nashville, but I think around 39 to 41 miles the nearest way. I cannot state definitely how far Moultrie is from Tifton; can't state definitely that it is about 30 miles and in the next county. I know where Moultrie is; have been there on a number of occasions. I cannot state how far it is from Nashville, and I do not know how far it is from Adel. I think it is 21 or 22 miles from Adel, and possibly 33, 34 or 35 miles from Nashville. I think Tifton is nearer to Moultrie than Nashville. I don't know how many warehouses the Valdosta market has, but I do know how many operated there this past season; it was four. Three warehouses operated in Hahira this season, two in Adel, and three in Nashville. There were five buildings in Tifton, but there were four separate operations. In other words, two warehouses there operated under one head, were operated by one man and considered one warehouse. I cannot state whether they had separate forces or not, I did not have anything to do with their business. The Twin Brick Warehouse operated two houses from one office and with one sales force, I think, and operated as if they were under one roof. There were four operations or separate businesses operating warehouses in Tifton. I don't know how many operated at Moultrie this year, but I think five. This year that was one of the large markets. Moultrie, Tifton, Nashville, Valdosta and Douglas are all double-sale markets, operate two sales at one time. Those markets are considered among the large markets so far as counties go; more than the one sale markets in the state. Hahira and Adel are both one-sale markets. The others, Tifton, Moultrie, Nashville and Valdosta are two-sale markets. I am not altogether familiar with the different distances between towns in South Georgia, certainly not enough to state that that is about the spacing of the various markets in South Georgia in the tobacco territory. I know the most northern market in the [fol. 363] State and the southern market in the state, but I do not know the distance that is covered by the warehouses in Georgia so far as the distance from the eastern to the western boundaries, and from the southern to the northern boundaries. I think the most northern market is Vidalia, unless it is Metter, Georgia. It is northeast from Nashville. Valdosta is nearly on the Florida line; it is only eighteen miles from the Florida line. The extreme eastern market in Georgia is Statesboro. I am not sure whether Pelham oper-

ated this year or not; if it did, and I think it did, it is the extreme western market in the State. If it did not operate, I think Moultrie is the extreme western market. I can't state how many markets there are in North Carolina; I could make a wild guess. This is my sixth consecutive year that I have operated a tobacco warehouse business in North Carolina. I started in Georgia before I did in North Carolina. The reason that the tobacco business in Georgia up to 1930, was, so far as my experience is concerned, profitable, and that since that time for most of the years it has been unprofitable is this: Prior to 1930 tobacco demonstrators were employed by the growers. Now tobacco demonstrators, I mean by that a skilled tobacco grower from North Carolina or Virginia, from the old belt where tobacco had been grown for years and years, and the people there were engaged in it and employed in it for years back,—that kind of man was employed by the Georgia growers to a large extent and their services to the growers in those years resulted in much better quality crops than have been grown as a rule since the practice has largely been discontinued. I am not positive that prior to 1930 our prices for tobacco in Georgia in some years went down as low as 10 cents per pound, even for good tobacco. I don't think that is approximately true. The prices in 1935 compared very favorably with prices received by the growers prior to 1930. I think it is substantially correct that I was doing [fol. 364] business in Georgia, either for myself or in partnerships, since 1923, seven years prior to 1930. I am doing business as a warehouseman in North Carolina, at Winston-Salem. That city has eight tobacco warehouses which will be operated this season. I can state the tonnage Winston-Salem handled prior to this year. I don't know and cannot state what will be done this coming season, but prior to this season they have sold 42,000,000 pounds since I have been in the warehouse business there, as little as that, and they have sold as high as 65,000,000 pounds since I have located on that market. There are eight warehouses which will operate this year.

In Nashville, where I have operated for several years, they had four warehouses at one time, but they are operating only three now. Two warehouses are sitting side by side, or they were sitting side by side, were joined together under one roof, making an abnormally large building. I cannot state when that was done, about 1926 or 1927, I think. They are

operating three warehouses in Nashville now, and operated three last year. Back in 1924, 1925 or 1926, way back yonder, several years back, they operated four. I am not prepared to state how much tonnage this year passed through the warehouses in Nashville. Our market did not have a board of trade and I have not seen a 1935 final statement from the Department of Agriculture. Approximately 2,529.604 pounds were handled by my warehouse, the Independent Warehouse. It used to be called Brown's Warehouse. There is a Planters Warehouse. I don't think it handled approximately as much tobacco this year as I did, but I cannot state what it handled. There is a Union Warehouse there. That is the large house, the two combined in one. I cannot state how much it handled this year. I have not had access to their books; I would say over two and one-half million pounds. With the Union over two and one-half million and my warehouse about two and one-half million, I would say the other house handled approximately two million pounds. [fol. 365] I would say that would make seven million for that market. Compared with Winston-Salem, that is a very small tonnage. Some of the houses in Winston-Salem sell more tobacco than the entire market in Nashville sold. The expense a warehouseman sustains is greater per million pounds in Georgia than in North Carolina. It takes approximately one-half as much money for me to operate three weeks in Georgia as it does to operate in Winston-Salem for a season. I allow myself a salary in North Carolina. I would like to change that statement. I did not charge any salary to my Winston-Salem operations for the past season, and in 1934 I did not. I did not in 1933 or 1932. I did not own the warehouse myself in North Carolina, I leased it. I operated as a partnership and it was an agreement between the two partners concerned that we would not charge any salary into our business operation and the net profits would be what we received, divided as per the partnership agreement. During the season both of us gave our entire time to the operation in North Carolina. In Georgia all of the partners gave their entire time except in 1934, when I operated as a partner with the man who owned the building, and he did not. It was agreed in the contract that he was not to devote any of his time to it. My partner this season in Nashville gave his entire time from June 1st until the market closed. He was the auctioneer and I gave him $1,000 as a salary, and

¼ equity in by business. I financed the whole thing. My auctioneer and I were partners and together we received for our services $2,000 which is charged in my statements as an expense. I received as my salary $2,000 and my auctioneer received $1,000 as a salary. Besides acting as auctioneer, he also acted as a trade man and solicitor and one of the warehousemen himself. Anything either of us had to do, we did. That would be $3,000 that is included in expenses which went to the owners or partners of the business. Our net profits on our statement for 1935 were [fol. 366] $3,722,40. That is what our statement shows. Among the expenses that we charged for that year are $3,000 that went to me and my partner. We arrived at the net profit of $3,722.40 by deducting that $3,000 as an expense. In addition to that, we deposited with the Clerk in Macon, Clerk of the U. S. District Court, $4,054.17. If you add the $3,000 paid as salaries to the net profit shown by our statement, that makes $6,722.40, and if you add the amount deposited with the clerk in Macon, you have something over $10,000. If the rates had been charged this year which the statute requires, we would have made $4,000 and some odd dollars less than we did make. The amount we deposited with the clerk in Macon represents the difference between the statutory charges and the charges actually made by the warehouses this year. Since 1930 and after that up until 1934, we have been passing through one of the worst depressions this country has ever known. Things began to get better in 1934, and it has been better in 1935. What effect the instruction and demonstration and advice through the years on the part of men experienced in the growing of tobacco, to and for the tobacco growers in Georgia, has had on the character of the tobacco and the tonnage this year is a matter which is incalculable by any human being and I cannot say. I stated that in Georgia this preliminary work, instruction and advice, was necessary because the farmers were not experienced in the growing of tobacco. I think without that knowledge and expert advice which was rendered them and for which a majority of it was paid by them, back in the early years of tobacco growing in Georgia, that Georgia would never have been a success as a tobacco producing state. I think this demonstration and expert advice has increased the efficiency of the Georgia farmer tremendously. I think that would be reflected in

the tonnage on an average year and the character of the tobacco and its preparation for the market. I cannot say what effect it had on the market in 1935 to make it a better market than in previous years. I can say that the ware- [fol. 367] house men in business in Georgia this season as a whole came to Georgia earlier, did more work in the country than I have ever known them to do since I have been a warehouseman, and I have never known harder competition to exist from the standpoint of getting business than existed there this season.

I am not prepared to say that with the same number of buyers in Nashville and operating two warehouses instead of three, and prolonging the season a week or two longer, the entire tonnage which was and is marketed in Nashville could be marketed in two warehouses rather than in three, except that I do know that it would hardly be physically possible that the amount of tobacco could be handled in two houses because the floors cannot be cleared continuously. If a man gets a first sale today and first sale tomorrow, and he employs additional forces and works over time and kills himself, or almost wrecks his physical constitution, he might do that in order to get cleared and tobacco back on his floor for the following day. If the farmers themselves would wait several weeks longer and market a portion of their crop, then it might be possible that one warehouse could sell during the season as much as the entire Nashville market. I don't know that the manner of handling is so much different from North Carolina, except the farmers cannot sell five loads of tobacco on five consecutive days because he has to have his tobacco put up in an orderly way and he has to put it in a pit as a rule in the ground to get the proper moisture contents into it so that it will not break and crumble, and so it will weigh more when he puts it in the warehouse. That is because of atmospheric conditions in North Carolina as compared with those in Georgia. In Georgia a grower who markets today or is in town today selling one curing of tobacco may have his wife and children and whoever he leaves at home working on another curing, and have it ready for him to haul by tomorrow, which is usually the [fol. 368] case. There is no reason why the curing of tobacco and the gathering of tobacco in Georgia could not be more leisurely done, as it is done in North Carolina, except the farmers as a rule in Georgia are not equipped and store

it in and a majority of them keep it in their residences and other houses, and they want to get it out of their way as quick as possible. There are no conditions in Georgia other than the absence of the facilities I referred to a moment ago, that keep the Georgia market from being an up-to-date market. I will state this, however; you cannot keep tobacco in Georgia very long because bugs get in it and destroy its value. The interest rate in Georgia is eight per cent and the interest rate in North Carolina is six per cent. The capital we borrow in Georgia is borrowed only for the period of the season. It is a kind of revolving fund during the time the market is in operation. I return the capital borrowed from the bank just as quickly as possible, as quick as I can, regardless of where the interest period runs, because that is my personal custom. I am eventually able to pay that, but, as I said, it is a revolving fund during the market. In North Carolina I didn't borrow money for five months rather than one month as we do in Georgia, because the banking custom is they don't make loans of that type for more than three months at a time. If we operate five months, sometimes we renew our note, and sometimes by that time we have capital enough in the bank. We do borrow in North Carolina, and we borrow in Georgia. If I had capital enough to operate a tobacco warehouse without borrowing any money, I would select a line of work less exacting on my physical constitution than the tobacco warehouse business. I am not a human calculating machine and cannot state if I pay 6 per cent on $10,000 for three months and then for two months longer covering the North Carolina tobacco season, and pay 8 per cent on that amount in Georgia for a month, the interest paid in North Carolina would [fol. 369] be more; I think it would be more. It is a custom in Georgia for the warehouseman to sweep up his floors after they are cleared of all company tobacco or purchased tobacco, and appropriate the loose tobacco to his own use. We take it from the floor where it has dropped during the day and keep it. It is called floor sweepings. That is the term it is generally known as to me. I have an item on my statement for 1935 showing how much floor sweepings I received and how much I sold it for. It is $1204.25. I have it listed here as scrap, floor sweepings, and I got for it $1204.25. I have that included as an item of income on my statement for this year. The total income was $20,554.78,

excluding $4,054.17 which is deposited in the registry of the court, Macon, Ga. I haven't got that entered as a part of my revenue for this year. I show it as a notation. If I added that $4,000 to my income, I would have $24,608 and a few cents, I think. My items of income are only commissions for sale of tobacco which I deducted from the farmers' bills at the time I paid for their tobacco, and the amount which I received as floor sweepings. I did not make anything this year on the sale of tobacco that I bought on the market, called warehouse leaf account; I lost $713.03. I have that item listed as a loss. I mean to say that I sold that tobacco on resale for $700 and some odd dollars less than I paid for it when I bought it.

Redirect examination:

I have never been advised of any constituted authority or regulatory body in Georgia that can limit the distances between markets. I have never been advised of any constituted authority in Georgia that will or can prevent the construction of any additional warehouse or its operation in any market. The warehousemen have no control whatever over those things. I testified that one of the reasons the growers of Georgia could not hold back their tobacco was that they are not properly equipped with outhouses to take [fol. 370] care of it and store it and delay the marketing of it. I stated that some of them keep it in their residences and other buildings they use and desire to sell it quickly for that reason. The warehousemen have no control over that. The profits and losses to which I have testified were made by or sustained by me during the number of years referred to have been earned or lost on the basis of the schedule of rates charged and exacted by the warehousemen in the season of 1935, regardless of the recent act of the legislature of Georgia which is under attack. If the scale of charges which is now the law in Georgia, passed by the last legislature, was in effect since I have been in the warehouse business in Georgia, I would have sustained a loss during the thirteen years that I have been in business there. The charges in North Carolina are regulated by statute and the warehousemen abide by them. It is possible to operate in North Carolina under the charges as fixed by statute there, whereas we cannot operate at a profit in Georgia on the charges named in the Georgia act, for the

reason that there is more tobacco sold in North Carolina in the various warehouses and volume controls profits to a great extent in the warehouse business, and the markets operate in North Carolina longer and it is a large market. It is a large market in the first place, and in the second place I do a large volume of business on that market and my income is so much greater and my expenses are not as much in proportion. Therefore, I can make larger profits in my seasons operation as a rule, and over a period of years in North Carolina. My expenses of operation in Georgia are larger per thousand pounds of tobacco or per hundred thousand pounds or per million pounds sold, than in North Carolina. They are substantially larger.

[fol. 371] Recross-examination:

I was operating in North Carolina in 1930, and I made profits that year. I don't recall how much, several thousand dollars. I never allowed myself a salary in North Carolina. I made a small profit in 1931. In 1932 I made a fair profit, and in 1933 a substantial profit. In 1934, I made about $18,000 in North Carolina to my part. This year we haven't opened the market and don't know what my profit will be. If the market began in August in Georgia and lasted four or five months, I could not operate in the two places. I could not do so personally. I could not use the same employees in North Carolina that I was using in Georgia, part of the period I could not. I am a member of the Georgia Tobacco Warehousemen Association. I don't recall how long I have been a member; I will say for ten years, eight or ten years, something like that. There was a change made in the warehouse charges at my house the first year I operated in Georgia. I had never been in the warehouse business in my life and did not know but very little about it, and I employed a clerical organization, a bookkeeper and two clerks from Danville, Va., and they started out with the Virginia scale of charges, which was different from the South Carolina scale of charges. I understood that a majority of the warehousemen of Georgia were charging the South Carolina scale of charges at that time, and I found I was charging the Virginia charges. I did not know it until after the season had closed and it caused me to take about $1100 or $1300 less than I would have done had I not acted so ignorant, or not been quite so

ignorant. I do not know that the scale of warehouse charges have been changed in Georgia within the last ten years. In so far as I know, I am charging now the same warehouse charges for auction fees and for the weighing and handling of tobacco and the same percentage as commission on gross sales charged by me ever since I have been in Georgia, except for the incident I have referred to. If the Georgia [fol. 372] Tobacco Warehouse Association has passed any resolution with reference to warehouse charges, I don't know of such. So far as I know the 44 plaintiffs who appear in this suit as warehousemen in Georgia charge the same warehouse charges and have been charging the same for several years, but I do not know. It is my best information that the charges have been the same for a number of years, and I have been charging those charges. I don't know what my competitors have been doing. I understand that those charges exist throughout the Georgia tobacco belt. I am informed that all the warehousemen in Georgia, or their owners or managers, are plaintiffs in this case. I do not know any one warehouseman who is not a plaintiff.

Redirect examination:

I have the leases available under which I operated for the past three seasons, not back of that. From my experience as a tobacco warehouseman, I do not think the rental I paid in Georgia was in excess of the fair rental on the buildings I have had leased. I do think it was in Winston-Salem. I do not think I have been charged reasonably for them, all the time, in Georgia.

Recross-examination:

I paid $3500 as rent this year for my warehouse in Nashville. Last year, in 1934, I operated a joint account with Mr. Gaskins, and there was no item of rent charged into that statement. In 1933 I operated a warehouse at Adel owned by the Adel Ginning & Trading Company, and for that season I paid $1,018.90; it was operated on a tonnage basis, paying rent by the thousand pounds sold. In Winston-Salem I have been operating six consecutive years. I paid $15,000 rent the first, second and third year; each year, annually. Last year I paid rent in Winston-Salem for it amounting to $9,373.44. The least rent I have paid in Winston-Salem was $6,000, and I leased that building

that year to Shott Manufacturing Company to store blankets in for shipment and received something over $500 back, which reduced my rent account to something over $5,000. [fol. 373] I paid $15,000 for three years. The year I paid $6,000 for it was the year I went bankrupt. The next year was 1933-34 season, and I paid $11,532.47. That was the sale of the crop of tobacco grown in 1933; in 1934 I paid $9,373.44 rent. It is a fluctuating charge graduating from $7,500 down to as low as $6,000, provided we have a crop failure and I do not sell much tobacco, and graduating up to as high as $12,000 providing I sell approximately 8,000,000 pounds of tobacco. On the statement of my operations for 1933 at Adel, Georgia, I paid my auctioneer that year $400.00, and in 1934 paid the auctioneer $75.00. That was not the same man, and I think the $400 man cost me a great deal more than even the one this season. That $400 man was a product of South Carolina, born and reared there, who had moved to Georgia. He was not an original Georgia man and was not a very efficient tobacco auctioneer. That item for advertising bill in 1933, $1,306.08, I cannot state what that constitutes. The item of $948.87 for trucking expense in Adel, is for one year I cut the pool and hired some trucks and hauled tobacco to my warehouse. I never did it prior to that time and never have since, and don't ever expect to again.

Redirect examination:

I am never going to do that again. There were two serious errors of judgment made by me at Adel, one in the employment of my auctioneer, and one in spending nine hundred and some odd dollars in trucking tobacco. Those two items contributed somewhat to the expense of my operation that year. I show a net loss of $521.58, and that of course was offset so far as I was concerned by the $1,500 that I got.

Recross-examination:

I consider I sold more tobacco in 1933 that I would have under the circumstances we had existing, and had a larger [fol. 374] income by reason of the trucking of the tobacco that I would have otherwise. To the inefficiency of the auctioneer, I consider I sold a great deal more tobacco on the $900 spent in trucking, but that I would have sold a

great deal more if I had paid a salary and gotten for $900 an A-1 auctioneer. I think if I had done the trucking and had had a good auctioneer, I would have done better, and I think I would have if it had not done the trucking and had spent that in employing a good auctioneer. I cannot state that if I had a good auctioneer and had done the trucking, the season would have been better than it would have without doing the trucking. I stated that I never expected to truck any more because it is a practice in the first place that is unethical, and in the second place it lowers the warehouseman in the estimation of the farmers and his trade, and will put him out of business eventually if he keeps it up, I think. Since 1933 the Warehousemen's Association has passed a code of fair practices which forbids the trucking of it during 1934 and 1935, for the season that the crop is grown and was grown in 1934 and 1935. There was no resolution passed or adopted that I know anything about in the Georgia Warehousemen's Association; it was a matter of fair practices put into effect by the New Deal Administration in Washington. They were Federal regulations. The Warehousemen's Association adopted a rule about that this year. It applied only for this crop season, and was to the effect that during 1935 there should be no trucking at the expense of the warehousemen. It was a warehousemen's marketing agreement under the supervision of the gentleman who was the code administrator for the National Warehousemen's Association during the year 1934-35. A code of fair practices was adopted this year by the Warehousemen's Association. The Federal Government did not have anything to do with that; it was first recommended by the Warehouse National Association and some of the belts have adopted a duplicate of the Federal Code and [fol. 375] practice and some of the belts which operate have not. My itemized statement of expenses for the year 1935, besides my salary of $2,000, shows that I paid an auctioneer $1,000. He was a crackerjack auctioneer. I consider my force this year very efficient and a good organization. I paid out $1,211.33 for lost tobacco; that was because of the fact that the market was operated so rapidly that we did not have men enough in our employ who were skilled in the matter of checking the coupons on the companies and when they made deductions, I did not have the coupon for it, and I could not collect from the buyers. And

I might also state that I had a Georgia man as a coupon man this year and did not have an experienced man from North Carolina to keep my coupons and check out my tobacco. Therefore, I sustained that loss because I could not produce the proof to the company that the buyer had gotten the tobacco. I consider that I had a good organization this year. The expense is not itemized, but appears in one figure of $3,340.77. I think I can give some light on that, but I cannot give every detail. In addition to that there is shown on the statement $2,000 salary paid to C. B. Strickland and $1,000 to auctioneer. In addition to that I have a leaf man $250. Then assistant floor man $125, an office man $125, a floor manager $500, a weigh man $185, somebody not named $160, two weigh men and a bookkeeper $500, a bookman $400, a clip man $400, a ticket marker $140. That additional expense item of $3,140.77 may be a payment to the bank for exchange, and interest and insurance. $1100 or $1200 of that item was paid to the bank for clearing checks, and a portion was paid to the bank on interest for money borrowed from them and $10,000 of my own money in the business was money of mine that I put in the business which that business paid me on for the time it was used. That was my business, but then my business was supposed to pay me interest on my money when it was being used by my [fol. 376] partner and me. I mean that while my money was being used the partnership paid me interest on it. That is my best judgment of what part of that sum went for. I cannot figure the interest on $10,000 for 17 or 18 days. My personal account on the books was credited with it. I can't give any idea as to the amount. $1100 and some odd dollars was exchange paid to the bank at the rate of $2.50 per thousand dollars paid by us. There was also some interest, but I don't know what the amount was. I don't know the amount of interest paid to me, somewhere between ten and twenty-one dollars, something like that. Of course interest and exchange was paid the bank. The amount paid me does not cut much figure with the $3,140. Part of it was for the purpose of buying sheets which I bought and loaned to the farmers, and part of it was for board. My board was paid by my business this year, and my auctioneer's was paid out of the account. I paid him a salary of $1,000 and I paid his board and transportation and gasoline and oil

bill. I think that was included in the $3,140.77. I don't recall how much board I paid for my auctioneer and for me. His name is Love. If board of Strickland and Love, $224.50 is on my expense, it is right.

Redirect examination:

The item of $200 and some odd dollars for board for my auctioneer and me included board and hotel expenses. That did not include gasoline, that was my board and my auctioneer's board for approximately three months in Georgia. We had to eat while we were down there, and sleep some, but didn't do much during the market.

Recross-examination:

That item of gas and oil, amounting to $208.59, is for gas burned in my car and my auctioneer's car and my floor manager's car, which we used for several weeks in the country. I also hired a man to drive him because he did [fol. 377] not know anything about the territory. That does not include the gas and oil used in coming from Carolina to Georgia for us three. Our contract stated that we were, that the business was to pay our expenses so far as gas and oil used in the business was concerned, and only after we arrived in Georgia. It did not include our gas and oil coming down to Georgia.

J. M. Easterly, sworn in behalf of Complainants, testified as follows:

Direct examination:

My age is 42. I am a native of Tennessee. I have been identified with the tobacco business, in one capacity or another 21 years. I started first as a book man. For the last thirteen years, I think it is, I have been running a warehouse and running a sale myself. I have operated at Greenville, Tenn., all the time I have operated, and operated in Georgia in 1926, 1927, 1928, 1929 and 1930. I have not operated in Georgia since 1930 until 1935. I operated in Georgia in 1935. I think I am familiar with the conditions that obtain with reference to the warehouse tobacco business in Georgia, and with the conditions that now ob-

tain in Georgia as well as the conditions that have and now obtain in Tennessee. In 1930 I operated in Douglas, Georgia at the Farmers Brick Warehouse, the same one I ran this year. We had a profit from the operations in Georgia in 1930; I don't know how much it was, and I don't have books back there. I operated as a partnership. Mr. Peagrem and Mr. Mitchell and I were partners for the last two years, 1929 and 1930. We made a profit in 1930 but not as much as we had prior to that. I don't know how much profit our operations yielded in 1930. It was a fair profit, I would say. In 1935 I operated the same warehouse. During those two seasons which I operated in Georgia, I think I practiced the business along the same lines employed by other warehousemen engaged in that line of business. I [fol. 378] endeavored, during those two seasons, to conduct my business on an economical basis the very best I could. I did not incur or pay any expenses which I did not deem necessary in the conduct of my business. In the year 1930, when I operated in Georgia, I made a profit. It was not as large profit as we made years before. It was something like one-half to two-thirds as much as it was in 1928 and 1929. That's the reason I quit business down there in 1930. I didn't return to Georgia to operate a tobacco warehouse until 1935, and I would not then if I had known the charges were going to be cut. In 1935 my operations resulted in a very small profit. I will have to look to the book to state the amount. The net profit was $1,684.31, and the most of it was on leaf though. Those figures are exclusive of what I deposited in the registry of the United States Court for the Middle District of Georgia; I took that out. I have $1800 and something deposited there with the court. That profit of $1600 odd dollars is the profit I earned after taking the $1800 out. I deposited $1,838.20 in the registry of the Court. In 1930 the rates or schedule of charges were the same as we exacted and collected in 1935. Every year I have operated in Georgia, the charges has been the same and for the five years back, 1926, 1927, 1928, 1929 and 1930, and 1935, all were the same. In the operation in Georgia for the years 1930 and 1935, I did not charge anything to expense which I did not think a legitimate charge in connection with the conduct of my business. I am familiar with the warehouse business generally. The expenses charged in those years by me were the usual and customary

expenses in the conduct of such a business as that. They were small this year compared to other years. The marketing season of 1935 was an unusually good season, the price of tobacco was good. The volume was better than it had been since 1930, I think. The price has something to do with determining the gross income or net income of a tobacco warehouse operation, and the volume has something [fol. 379] to do with it. If prices are high, the income is greater, and if the volume is greater, the income is greater. The expense is not as high in proportion per hundred pounds if you handle more tobacco. The less you handle the higher it is per hundred pounds. I am familiar with the charges passed by the recent acts of the Georgia Legislature now under attack in this case. They are practically the same as North Carolina charges. In 1930 if we had charged the new charges they are trying to fix, we would have done well if we had broken even, I think. Now, I do not have the books for the year, but I know it would have been considerably less. Our books for 1935 show a small profit after deducting the amount put up with the Court. I don't remember what amount of working capital I employed in Georgia in 1930. Well, I know what I used this year, and it was, I imagine, more than that because I had a larger volume. I had $37,500 this year, $20,000 borrowed and $17,500 our money, which we did not charge interest on. The year 1930 took more capital, because it was a larger volume of business. The prices in 1930 as compared with 1935 were not as good. That effected our gross and our net. The amount of working capital employed in our business in 1935 was $37,500, $20,000 borrowed at 8 per cent interest, and $17,500 in money of our own we did not charge interest on. In 1935 no allowance was made for interest on my individual money put into the business. We paid eight per cent interest on the borrowed capital in Georgia in 1930, and the exchange on the checks; $630.18 for interest and exchange. Whether it was borrowed capital or individual capital, we put it in the bank and made it available for our warehouse business. The bank charged us exchange for all checks drawn on that account at one-fourth of one per cent; $2.50 per thousand dollars whether it was our money or borrowed money. We paid eight per cent interest on borrowed money invested in our business in 1930 and in 1935. I operate a tobacco warehouse in other states and do now. It is in Tennessee. The rate of exchange paid

[fol. 380] there is $1.00 per thousand dollars. The interest rate there on borrowed capital is just as cheap as you can get it, never over 6 per cent. In my expense account charged against operations in Georgia for the years 1930 and 1935, no allowance was made for my salary. I had a partner in business with me in 1935. We both gave our time and furnished automobiles to ride the country and paid our own board and never charged anything to expense at all. We got $1,684.34 out of the 1935 operation, to be divided between the two of us. That is all the compensation we received for the efforts we devoted to it. I went down in advance of the opening of the market. I worked the country myself five weeks, and my partner three weeks. I had additional solicitors employed to bring business to our warehouse. That expense is reflected in my expense account. The expense for the solicitors is all in the expense account. What I received in the way of compensation and what my partner received was the net profit divided. A deposit was made in the registry of the United States Court, and a majority of that was made probably on the leaf account. We paid all our own personal expenses. We made four or five trips backwards and forwards to Tennessee, and paid our own expenses and they are not charged. We would have lost money, I expect, if we had charged it all up. We rented our warehouse down there. The rental paid in 1930 was $3500, and in 1935 the rental was the same amount. From the cost of the warehouse and considering the money in the warehouse, that was not any more rental than the owners should get out of it. The warehouse cost $34,000, and taking everything into consideration, $3500 is not too much rent, especially if you take into consideration the upkeep. I figure that amount would take care of the depreciation and upkeep. They pay all taxes, interest and everything, and I think they are entitled to that. I do not consider that rent an exorbitant charge. I conducted my business as cheap as possible. The warehouse charges ren- [fol. 381] dered for services in Tennessee are a little higher than the charges rendered for services in Georgia. They are not regulated by statute in that state. In upper East Tennessee there is one charge and in Middle Tennessee another. In the various belts I would say the charges are regulated by custom. We have always charged a certain amount in our belt and in the other belt which is a different

belt they have always charged a different amount. It would be hard to say what the result to the warehousemen and growers would be if in Georgia one warehousemen made one charge and another a different charge, but I would say that it would ruin the warehouse business. I have found that the farmer does not object to paying a legitimate charge if he gets a legitimate service. Some warehouses do charge more than others because they give better service. As a rule if the farmer gets satisfactory service and gets a satisfactory price, there is no complaint about the charges. I have never had many complaints registered by growers in Georgia during the years I have operated in Georgia. I have operated for other people in North Carolina; I have run the sales for warehouses, but have not operated individually in North Carolina. In East Tennessee we charge 20 cents a hundred, which is ten cents a hundred more than North Carolina charges, and 3 per cent commission, which is 1/2 of 1 per cent more, and the auction fee is the same as North and South Carolina. With the 20 cent charge on average tobacco in upper East Tennessee, the charges run around $1.00 on the hundred pounds, and for the other belt where they charge a flat rate of 50 cents and a 3 per cent commission, it makes $1.10.

Cross-examination:

Burley tobacco is raised in the part of Tennessee where I operate. Burley tobacco and fire cured tobacco, which they raise in Georgia, are altogether different. Burley is air cured. Different conditions obtain in Georgia altogether, and the two kinds of tobacco are different. North [fol. 382] Carolina and Georgia raise the same kind of tobacco. Tennessee and North Carolina are different, where I am. In Tennessee my patrons raise burley tobacco. You will find some of the same kind raised in North Carolina and then some dark fired tobacco in part of it. I conducted a tobacco warehouse in Georgia four years before 1930, five including 1930. Before I left Georgia I conducted a tobacco warehouse for five years and came back in 1935 and conducted a tobacco warehouse for one year. The five years I refer to were in Douglas also, at the same warehouse. It was rented by me all of those years. In 1928, 1929 and 1930 the rental was $3500, the same as for 1935; and in 1927 as well as I remember the rental was $3000. The first year I

was there I took it on a profit-sharing basis, one-half. In all of the years preceding 1930, I made a profit in the warehouse business. The tobacco tonnage for those five years was lots more than the tonnage for 1935. That was true each year; some years more than twice as much as 1935, and every year more, from 500,000 to one and one-half million more. That applies to my warehouse and also to the tobacco belt in Georgia. The market sold more those years, the Douglas market sold more. I think it applied to all of the markets in the South Georgia tobacco belt as a whole. The total amount of tobacco grown in Georgia for those five years was more than was produced in 1935. There were 75,000,000 to 100,000,000 pounds, as I remember it, those years. Last year it was 33,000,000, I think. I think it was 72,000,000 this year from the last report I have heard, and the amount I named last year. I have not seen the official report. To some extent I account for that this year because the Government restricted production in South Georgia. There would probably have been some more tonnage this year in Georgia without the Government restriction than in any of the five years, but not much more, I don't think. The prices were higher, I think, during the five years I conducted [fol. 383] the warehouse in Douglas prior to 1930, except in 1930. They were lower in 1930 than they were this year. I don't remember the average prices the first year I conducted a warehouse in Georgia; I think $20.00. It was around 10 cents a pound in 1930, I don't think it was prior to that time. I don't remember the lowest year other than 1930 for my operations. I don't remember that one year the average prices were $15.00; it could have been that for one year in there. The prices in my warehouse have averaged somewhere close to 19 cents, 18 or 19 cents, something like that for this year. The name of my warehouse in Douglas is Farmers Brick Warehouse; they did not operate last year. The warehouses that operated last year in Douglas were the Big O. K., the Red Warehouse and Soapers. This year we had five warehouses operating in Douglas; the other two were the Growers and Farmers Brick. The Farmers Brick was mine. I think Soapers Warehouse handled the most tonnage in Douglas this year, but Soapers, Red and O. K. were about the same. I did not handle as much. I think my warehouse handled 1,300,000 pounds this year and that included resales and leaf resales, with about 75,000 pounds of leaf on

there. The total tonnage handled in Douglas last year was something over three million. This year it was eight million and something, I think. The average price in Douglas last year, as shown by the official report, was $18.83, I think, and this year it was somewhere around 20 cents, between 18 and 20 cents. I think the highest average ever brought in Douglas since I have been operating there was 24 or 25 cents one year, and I think 1929 had that average. I think 1929 was the highest; that was a good year. The tonnage and the price were two elements that entered into our income. The more you sell, the more you take in commissions, of course, and the more it brings the more you will also take in. You can handle two million pounds for about the same amount you can handle one million when you have a full warehouse [fol. 384] force. This year I have been charging 25 cents auction fees on all piles up to 200 pounds, and 50 cents on all piles over that. The statutory charges are 15 cents up to 100 pounds and 25 cents above that. Our handling and weighing is a separate charge. The charge I have made for that this year is 25 cents for all piles up to 100 and 25 cents a hundred if it weighs over 100, and fractional parts thereof. My commission on gross sales this year was two and one-half per cent. In Tennessee I got three per cent commission and the same auction fee, and 20 cents a hundred weighing charge. I said on direct examination that it was one-half of one per cent more commission than in North Carolina, which makes it three per cent. I am operating this year in a partnership. F. T. Emerson is my partner. He is not a resident of Douglas, he is from Greenville, Tenn. We haven't any interest in Tennessee together. He stayed here the entire season too, I mean in Georgia. I ran the sales. The warehouseman starts the tobacco sales on the floor. I go down the line with the buyers and make the bid to the auctioneer, we bid and run and follow the sale. My partner helps run the sale and is right there with the buyers and auctioneer. I go ahead and tear up the pile. The most of my profit this year was made on tobacco I bought, the leaf account. That's the tobacco bought on the sale. That is the tobacco bought while I am going up and down the line with the sale, and I make a bid and if my bid is not raised or equaled, it is knocked off to me. Practically all I made this year was made from the receipts from our leaf account and resulted from the purchase price being lower than what

later sold it for. I got $1,311.88 on resales this year. That includes the sweepings, and it is all throwed together and we sell them all together. I made on the tobacco that was gathered up from the floor and profit on resales $1,311.88. We did not lose any tobacco and had no lost tobacco account. Careful management and keeping a check on it is how I [fol. 385] account for that. I have a force of check-out men that I especially take with me. I got them from Tennessee. They were not educated in the tobacco business in North Carolina, they were educated in Tennessee. They have had no practice in the North Carolina markets. With their help and sid I did not lose any money on lost tobacco in 1935. I did make upward of $1,300 on resale and scrappings. I have my expense account divided up here. The expense of labor in 1935 was $1,183.91. That's our common labor; then general expense, which includes all other general items, $905.02; rent on warehouse, expense, $3500; interest and exchange $630.18; salaries for force, $2,773.41. That is, the skilled force. That doesn't include any salary for me or my partner, we did not draw a penny. That's all the items of expense. The total expense is $8,992.52. That is the total expense which is deducted from our receipts in order to get our net profits. The total receipts were, commission $11,203.15, leaf $1311.88, making $12,515.03. Subtracting from that our expense would leave the amount of net profit we have on our books and in addition to that $1800 deposited with the Clerk. The deposit with the clerk was $1838.20, and the profit $1684.31, that makes a total of $3,522.31. I have the salaries itemized. The auctioneer received $400. I think he was a competent auctioneer, and of course I had to hire one. He was about as cheap as I could get to get a pretty good one. I brought him from Tennessee. The bookkeeper received $240. I didn't bring him from Tennessee, he lives in Douglas. Assistant floor manager, $100; assistant who helped on the sale and who used to be a partner of mine, Mr. Peagrem, $493.41; weighman $100; clip man $200; another assistant floor manager $60, but I did not use him but two weeks; book man $150; floor manager $180; check-out man $160; night weight man $150; solicitor and floor manager $400. We worked him in the country five weeks and also on the floor. The total salaries [fol. 386] is $3,773.41. The tobacco warehouse season in the part of Tennessee where I operated lasts about ten

weeks. It lasted in Douglas this year about three weeks and a day or two. It costs about twice as much to sell tobacco in Douglas as it does in Tennessee. For one warehouse in Tennessee I paid out about one-half as much in expenses as I did in Georgia, and for two warehouses about the same as I did in Douglas. In other words, I was running two warehouses in Tennessee for about the same as one in Douglas. I mean for the entire season, for three months or whatever it takes to sell it. On the average crop of tobacco in Tennessee, the prices are not quite as high as they are in Douglas. In Tennessee I pay about $2000 for insurance and taxes, and own the warehouse. They all own their warehouses up there where I live. My warehouse in Tennessee is at Greenville, Tenn. It is in East Tennessee. When I borrow money in Tennessee, it is for a longer period and where I pay six per cent, as I do up there, the interest runs longer, but I don't have to borrow near as much and the bankers are a little easier. My interest account runs for a longer period. I don't borrow the money in Tennessee for the entire period; I usually borrow it for 45 days and after that, pay it back and renew on what I have to have after that. We borrow in Georgia for thirty days.

Redirect examination:

The operators in Georgia render the growers the very best service they can. I would not say there was so much difference in the service we render in Georgia and to the growers in the burley belt in Tennessee, while it takes lots more labor and force in Georgia, a night force and a day force. The service we render to the growers prior to the opening of the market is very small in Tennessee as compared to Georgia. The operators of tobacco warehouses in Georgia render service to the growers prior to the opening of the marketing season. I did that because the others did. [fol. 387] That is necessary for the successful operation of a Georgia tobacco warehouse, to a certain extent. Some warehousemen loan money to customers and furnish them sheets. Some of them haul the tobacco, I understand. I did not. I did not furnish any sheets and did not loan but very little money, but some of my competitors did, and they sold more tobacco than I did. I would say it was probably successful. So far as the solicitation of business and field work is concerned, that is employed by all warehousemen to

a certain extent. It is necessarily incident to the operation of a Georgia warehouse. The charges for the services rendered by a warehouseman in Tennessee are a little higher than they are in Georgia. We do not have to finance the growers or anything of that kind in Tennessee, and we do not solicit as much as we do in Georgia. In our operations in Tennessee we do not have to go out and instruct them about planting or curing of their tobacco. We don't have to instruct them about the cultivation or curing of their tobacco, and we do not have to go out and instruct them about the gathering or harvesting of their tobacco. We do not have to instruct them about curing it. When they bring it into our warehouse in Tennessee, we do not have to employ a great number of men as common laborers to place it on the floors and do things like that for the growers; not near so many laborers, and they handle most of it themselves. They have grown tobacco in Tennessee for a sufficient length of time to know how to handle it and bring it in and place it on our floors; they have grown it for thirty or forty years. That reduces the cost of our common labor.

Recross-examination:

The burley tobacco they raise up there is not brought into the warehouse loose. It is tied up in hands like it is down here in North Carolina; it is graded tobacco. By [fol. 388] hands I mean about 20 leaves in a hand. They call the package in which it is tied up a hand. Georgia is the only place where loose tobacco is sold, and in the others it is tied up in hands. When it is brought in, it is placed on baskets in the warehouse. The sale is conducted on the warehouse floor like it is in Georgia. We have very little scraps or loose leaf or waste that we gather up in Tennessee, a handful off now and then and we pick it up. The tobacco there is tied up and in Georgia is is not, but is loose. I did not separate the account for tobacco picked up and sold from our resales in Georgia for this year; we sold it all together. I would say there was something like $500 of floor sweepings. We don't get that in Tennessee, maybe we get $100.00. In Tennessee we buy tobacco like we do in Georgia on the market. Sometimes we lose money on it and sometimes we make money. We do that in Tennessee about as extensively as we do in Georgia, about the same. The four trips made from Tennessee to Georgia and

from Georgia to Tennessee were all for the Georgia warehouse. We first came down and looked over the crop to see whether or not to lease the warehouse. That was way back, I think, in April, probably the 1st of April. We stayed in Georgia two or three days then. Then we went back to Tennessee. We live in Tennessee and had to go back home. Our next trip was about May, and then went back again. Stayed about a week as well as I remember; that was to see how the crop was looking. The first time we came down we stayed two or three days, and the second time we stayed longer, a week, probably. We went back home again and thought that the market was going to open earlier than it did. We went back home and stayed a few days and found it was going to open later, and that was probably the reason for so many trips. We did not want to incur the expense of drumming the country for full six weeks before the market opened. The third time we went down was a little over six weeks before the market opened, and we went down [fol. 389] to get the force straight, so that we could get started to work properly and then went back home and stayed a week until we came down for good. We made four trips to Georgia and four trips back. Prior to 1930, and including 1930, my warehouse operations in Tennessee yielded a profit every year. After 1930 and up to 1934 they yielded a profit. It was not as large profit as it had been in previous years, some years very small. I attribute that to the depression to a great extent, low prices on tobacco and the depression. The depression caused practically the same condition in every business. In 1934 I did not do business in Georgia. I did in Tennessee. I didn't make more money in 1934 in Tennessee than I had in the years preceding back to 1930; I made more money in 1933 than in any of the other years. I have not sold this year's crop in Tennessee yet and cannot tell what I will do this year in Tennessee. I think the seasons and the condition of the weather during cultivation are responsible for the quality of the tobacco this year and for its volume and the price in Georgia. I don't think the Georgia tobacco farmers know a bit more about the growing of tobacco than they did five years ago. I don't think the service the warehouseman has rendered in going down and teaching them has resulted in very much, as far as the farmer is concerned. They may know a little more than they did in 1923. I didn't make any more money in 1935 than I did in some of the years before 1930. This

year the farmers made more tobacco per acre. Then sometimes the first year man makes the most tobacco. I made more money. The tobacco was good enough to bring good prices, about as good as before the depression arose. When we go around among the farmers, we do instruct them, but the main purpose is to get them to sell tobacco with us; that's the main purpose. Some of the farmers will listen to you, and some of them will let you talk but won't listen to you. They have, or used to have, demonstrators in Georgia, [fol. 390] and some of the farmers would listen to them and some would not. I think there are not as many demonstrators now as they used to be. I did not furnish the demonstrators; I think the farmers paid them. The demonstrators that helped the farmers in Georgia and that help them now were and are paid by the farmers themselves. I have never been down to Georgia when the farmers planted their beds. They plant them before I ever come down, it is during our season in Tennessee. They plant them along about Christmas or January 1st, in there, in the winter. The contact I make with the Georgia farmer is after the planting of the bed has taken place, but some of the warehousemen stay down there. My contact with the growers is after the tobacco is practically grown, anyway after it is started. It used to be a general custom in Georgia for the warehouseman to advance money to the tobacco growers, but they have not let them have much money along during the depression years of 1931, 1932 and 1933. We did not loan them much money then because we were afraid we would not collect it. In 1935 some of them lent money. Prior to 1930 I used to lend a good deal of money. If the tobacco warehousemen had a big loan with a man, they kept in touch with him and if possible saw that his tobacco crop was properly grown and cared for.

Redirect examination:

The limitation of acreage had something to do with the prices for the present year. I have no way to tell how long the acreage would be limited by the Government.

[fol. 391] W. E. Fenner, sworn in behalf of Complainants, testified as follows:

Direct examination:

My name is W. E. Fenner and I live at Rocky Mount, N. C. I am in the tobacco warehouse business, and farm too. I have been in that business 34 years. I would say I have been familiar with the operations of a tobacco warehouse and with the conduct of that business for thirty years. I operate in Rocky Mount, N. C., Tifton, Ga., Blackshear, Ga., Moultrie, Ga., and Harrodsburg, Ky. I have operated in Georgia in the tobacco warehouse business since the second year that they started selling tobacco at auction in Georgia, I think it was 1919 or 1918. In my operations in Georgia my businesses have been conducted individually and as partnerships. In 1935 I operated at Tifton, Ga., with Mr. Weathersby as a partner; in Moultrie I had my son, J. B. Fenner, and R. R. Meador; in Blackshear, Ga., Mr. Paul Morgan. Representing those three partnerships in those places, I am a complainant in this case now under investigation. The names of the warehouses in which I am interested in Georgia are Fenner's Warehouse at Tifton, Big Z Warehouse at Blackshear, and Farmer's Warehouse at Moultrie. I give the biggest part of my time to the warehouse at Tifton. I help hire the force at the other warehouses, and suggest and recommend different things to do in the way of advertising and other things that come up. Then I go to those markets at least two or three times a week and see that they are keeping them going as best I can, and see that they are running the warehouses under my instructions and according to my idea of how a warehouse should be run. In Tifton this year I put up $3,000 in a non-checking account and borrowed $40,000. The same thing in Moultrie. In Blackshear I put up $7,500 or $7,000, either one or the other, I think $7,500, and did not make any note at all, with the understanding that they were to pay my checks and I was to pay them 8% interest on the [fol. 392] overdraft and pay them ¼ of 1% for paying off my sales. The interest rate and exchange rate was the same thing in Tifton, Moultrie and Blackshear. I did not have any limit at Tifton and Moultrie as to my borrowing. They wanted me to borrow more money but from my standpoint I figured that amount of money would take care of my business, and of course I would save interest, but there was no limit they put on me. Now I made that as a deposit into the warehouse account in those two instances, but on

the first day's sale there I think I paid out between $65,000 and $70,000 on checks that went through that account and that bank without making any more notes; and that was with the understanding that I was to pay 8% interest on my overdrafts which at times ran up to as high as $100,000 in the individual places. From my operations in North Carolina and in Kentucky, I will state that the cost of operating a warehouse in Georgia is greater than in North Carolina and Kentucky. It is greater in Georgia than in either Kentucky or North Carolina, I operated in them both. There are several reasons for that, which have been gone over here by all of the witnesses and they are absolutely facts. We have to have trained men in the different departments. For instance, clip-men, book-men, ticket markers and auctioneers, and we have to pay those men a larger salary, some larger salary, and in a great many instances have to pay their expenses while down there, because those men have families and when they go to Georgia the family expense goes on at home just the same and they have their living expenses, board and room-rent in Georgia. It is a little high during a tobacco season, and I suppose higher than it is during the balance of the year. It is higher then in my town, taking for instance the same board and the same kind of room. By my town I mean Rocky Mount, N. C. Then there is another thing: the common labor down there which we have to use—we have to [fol. 393] pick up anybody we can get and they are inexperienced and you don't have but very few of the same men as a rule from season to season. As far as my observation goes, a large per cent of the men we have down there each year are new men. I don't think the common labor employed from year to year are the same men. That is only true to a small extent. Being down there just such a short time, we do not have an opportunity to keep them from year to year. Those men, of course, come there and work with us, and there are some that come back and rework with us. Most of them that do that are those around town but most of them come in from the country and are fellows around town but who probably don't stay there all the time. So when we get back another year, these fellows in town have perhaps got a job or are somewhere else. I know we have new shifts practically every year. That is not true in Rocky Mount, N. C. We do have there most of the same

labor. Our biggest part of the labor there comes from the people who live there the year through. We employ the larger percentage of the same men from year to year, I should say 70%, but all of them are trained in Rocky Mount and if they do not work for my warehouse they work for some other warehouse. That is true also in Harrodsburg, Ky. There are other reasons that makes the cost of operation in Georgia higher. You have got to have a set expense. In other words, you have got to have an organization whether you sell 100,000 pounds of tobacco or 10,000,000—your auctioneers and pay-off men, your bookmen, your clipmen, your ticket markers and your floor manager. And you have to have your night watchmen and different employees of that kind, regardless of what amount of tobacco you sell. Therefore, on account of the shortness of the season in Georgia and the lack of volume, it runs your expenses up higher per 100 pounds than it does on either of the other markets I operate on. In 1935, I sold at Tifton, 2,894,400 [fol. 394] pounds, and at Blackshear, 2,427,892 pounds. That was first-hand sales. At Moultrie I sold 2,179,050 pounds. I was wrong, the first sales for the warehouse at Tifton were 2,691,896 pounds. In my three warehouses in Georgia I sold approximately 7,000,000 pounds in 1935, and I sold 4,000,000 pounds in Rocky Mount in the same length of time at one house. I operate two houses at Rocky Mount, and did in 1934 and 1935. I have sold in those two houses since I have been open at Rocky Mount. Those two houses are run by me and I haven't any partners there, and I never have a sale at one house but one day; and I use the two houses to get me more sales. I usually take a whole day to sell out one of the houses. During this fall, in the 1935 season, I have sold in excess of four million pounds in the two houses at Rocky Mount, right around that. I haven't the 1934 poundage. I haven't got the pounds; I don't know why they didn't put that on this sheet. The Big Z at Blackshear sold 582,000 pounds, at Moultrie 1,806,000 and at Tifton 1,436,488 pounds, making a total of 3,925,770 pounds I sold in Georgia in 1934. The poundage sold through my two warehouses in Rocky Mount in 1934 was 8,800,000 pounds. I can't tell exactly what the poundage was at Harrodsburg, Ky., approximately three million pounds. The cost per one hundred pounds of tobacco sold is greater from my operations in Georgia than in those three places. Prac-

tically the same thing applies as to the Kentucky market that apply generally in North Carolina market, with reference to labor and seasons. I think the expense of unloading in Kentucky is somewhere in keeping with that in Georgia, due to the fact that their tobacco, although the men know how to unload it and they are experienced, but tobacco out there is not brought in like they do in North Carolina. They bring it in packed on long sticks, stick after stick, and then they take it off and it has to be graded, and that is one reason they cannot unload at night and take it and [fol. 395] separate it out. They take it and pick it and then put it in a pile and they stack their piles like a fellow does who packs it around like he is putting it in a hogshead. The warehouse pays that expense in Kentucky, we give them those services. That is, we furnish the warehouse for the farmers to bring it in and we help unload the tobacco and we furnish the auctioneer and of course we sell the tobacco and we pay the farmer for his tobacco as soon as it is sold there and that is a part of the service we render, just the same in all three states. It is that way in all three states as to unloading and the selling of tobacco. The cost of rendering that service in Georgia costs more per hundred pounds than in the other two states. We have to have more men employed in Georgia than we do in the other states, due to the shortness, short length of the selling season, and also to the fact that the men are inexperienced and therefore cannot accomplish as much as a man who is experienced, and that refers to common labor and floor manager, the men we hire down there. In North Carolina, South Carolina and in Virginia, in the old belt, we employ more than one shift of labor. I don't know anything about the dark fired tobacco up at Lynchburg, Danville and Winston-Salem in North Carolina, but it is all considered one belt. In the old belt we start unloading tobacco as soon as it starts coming into the warehouse and unload it until we get our floors filled, and one-half of that tobacco, if not more, is unloaded at night. Now in Georgia it is more necessary to unload at night than here. However, we have to begin down there at night at 12 o'clock or 1 o'clock so that we can get the farmers unloaded. I mean that we have to keep unloading right on through the middle of the night. Now up here they bring some in during the first part of the

night and then very early in the morning. But in Georgia they might come in with a load after one o'clock Saturday night and then come back in with another Sunday night. [fol. 396] We never close in Georgia. Sunday night you will find them unloading tobacco and unloading it all night long. One might think that it would be a better proposition to the farmer if we were to insist on unloading his tobacco in the day, but in the first place it would be impossible just like it is here for us to get the tobacco on the floor in time for the sale. That of course would just simply slow up the sale and be a bad thing. It would be a bad thing for the farmer as well as for the warehouse. That would be a great handicap to us and to the farmer. For instance, I left my warehouse at 12 o'clock one night and there were 150 trucks standing out in the streets being unloaded as they came in. You cannot let all of them come in at one time. If you do, you would cover up your floor space without getting it lined up sufficiently and it would create the greatest confusion and cause a lot of tobacco to be lost. So you start unloading tobacco as fast as you can and putting it over on this side of the house, for instance, and you let maybe 20 trucks come in at one time and the others stand out and take their turn. If one man has 25 piles in a lot and the next man 26, we try to get it all together in the rows. It can rain one morning and be clear that night and the next morning be raining again and the sun shining that afternoon. I have noticed that since I have been in Georgia and I am convinced that if we had not unloaded the trucks that night and cleared these trucks of all tobacco at our warehouses, but let them wait until daytime, that the farmers would have lost hundreds and thousands of dollars by their tobacco getting wet while they were standing there in the street waiting to get inside of the warehouse. It is more necessary to do that in Georgia than it is up here, although we do it and although it is the custom here to unload tobacco when it comes in. A big part of the tobacco is unloaded at night here, but it is more necessary in Georgia than here. It requires more common labor to unload [fol. 397] tobacco in Georgia than in North Carolina. I rent my warehouses in Georgia.

I am familiar with rentals in North Carolina; I do not rent any houses there, but I did rent one up until two years ago. The rental of tobacco warehouses in Georgia is more

expensive per hundred pounds, in some instances it is a great deal more expensive. In Tifton I pay a rental of $1.12½ cents per thousand for my warehouse. It is a minimum payment in Blackshear, I pay $1.25, and the reason I pay $1.12½ cents in Tifton, one reason is, because I furnish the baskets in Tifton. Most of the warehouses are furnished equipped. Some of them do not. The Blackshear Board of Trade furnishes the baskets down there. In Moultrie I pay a flat rent of $5000 a year. I would say that a warehouse that would sell one million pounds of tobacco on a market in North Carolina, would rent from probably $750 to $800. I own my warehouse up in Kentucky. I know of absolutely no control that the warehousemen have over any other man going into the warehouse business in Georgia, Kentucky or North Carolina. Not as much as you lawyers have in practicing law. You all do have to take an examination. A man can go into the warehouse business if he has money enough to finance himself. In 1934, Georgia produced, I think, 36,000,000 pounds of tobacco, North Carolina produced, I think, approximately 185,000,000. I am speaking of bright tobacco. Wait a minute, I don't know that. There was 560,000,000 pounds of tobacco raised which we classed as bright tobacco; it is all classed together and carried together in round numbers. I do not know the exact amount. In my tobacco operations in Georgia for the years 1930 through 1935, I made a profit in each of those years. I can give the figures for each of the years. I am giving the profits here at Tifton; as to these other warehouses I am interested in, my son and Mr. Morgan have testified. They were the managers of those houses. The net profits at Tifton was [fol. 398] $5,296,91. I never charged anything to the business for my time and services. That net profit is to be divided with Mr. Weathersby. No charge was entered on the books for 1935 for any services, time, skill or executive management devoted to the business by Mr. Wethersby, and this profit is figured on the new charges. I have a figure for the amount deposited with the Clerk of the Court at Macon in this proceeding. That amounted to $4296.98. If this case is successful and the old charges are sustained, the net profits for 1935 at Tifton amount to around $9000, that is, if the old law is found to be all right. If we are permitted to make the old charges, we will make a little over $9000 profit. My profit in 1934 was $6798.25: That was to be

divided with Mr. Wethersby. We never charged for his services or my services. That is the net profit. I did not see any use of charging it with a salary when we were the only ones interested in it. The next year, 1933, the profit was $8723.01. The same facts are true with reference to a division of that profit and as to the charges in the business we discussed as to the other years. The next year is 1932, and the net profit was $2333.96. That was to be divided between Mr. Wethersby and me. That represented the entire profit to me and Wethersby, no salary included. In 1931 the net profit was $8042.90, no salary; in fact we never charged any salary at all. I haven't the figures for 1930. We earned a profit in 1930, but I do not know the approximate amount. I do not remember any of those years back there and cannot give any idea. I would not have known what these were if I had not had a bookkeeper to get them up. Mr. Fleetwood worked with me during some of those years. He was on a commission up until this year. Those figures were arrived at before deducting Mr. Fleetwood's interest. The net profit was reduced by the amount we paid Mr. Fleetwood. I don't know the amount each year that was paid him, up until two years ago he got 20% of the net [fol. 399] profit. The net profits were really distributed among three people instead of two, up until two years ago. Since then it has been divided between only two of us. It is hard to say, from my experience as a warehouseman, if I were unable to attend to the business at Tifton and had to hire a man to perform the services that I performed in those years, what a reasonable salary per year for a man to perform the services that I have been performing would be. I feel myself that I know how to run a warehouse. I have been showed many reports for 1932 when 90% of the warehousemen made a loss and I made a little profit, and I figure that if I had been hiring some man that instead of showing a $2000 profit, I would have shown a $6000 or $7000 loss. Of course if I had hired other men it would have been different. I have never hired anyone in that capacity; have never paid a man a straight salary to operate a warehouse. I don't know how to approximate that. I know what I would charge to do what I do if I went down there and if a man was going to pay me a salary. I would not do it for less than $3500 or $4000, per season. It is not the thirty days down there alone. That is hard physical work. But on

top of that you have got to do a great deal of mental work during the marketing season. Then there is all the work before that. A man has to start in early. Even now, I am starting in to figuring on my organization and plans for operations for next season. And it is a bit hard to tell just how much time really goes into it. So far as Georgia is concerned, I was one of the pioneer warehousemen in Georgia. I was there the second year it ever had a market, and I have gone to Georgia year after year knowing before I left home that I was going to lose money. You might ask me why I knew I was going to lose money, and I would say there was not a sufficient amount of tobacco down there raised for me to sell enough to pay my expenses. I carry with me just as good men as I could get because I wanted [fol. 400] to build up the market, I mean the Georgia Tobacco Industry, and I felt like there would be some pay in it later on. I have spent a great deal of time and money in railroad expenses and things of that kind going to Georgia in the days way back yonder. Somebody said just now that tobacco had been in Georgia thirty years, but the first market—I think I am correct about this—the first warehouse opened in Douglas, Ga., in 1917. I went down there then just to observe it and look it over. In operating a warehouse, I employed my skilled labor in advance of the season. Prior to the 1935 season I contracted with Martin Kirby, some time in March, I think. He was a trade man and a helper on the floor, assistant. He was from down near Pearson, Georgia. I contracted with E. L. Ring, from Hahira, Ga. He started to work in May. I furnished him an automobile and furnished him gas. He was a solicitor and helper on the floor there in the warehouse. I hired my auctioneer the day before Thanksgiving last year, and his name is E. H. Anderson. I agreed then to pay him the salary I paid him this year, by a contract. Other employees I contracted with were Allen Carrington, a trade man and helper on the floor. When I say helper, I mean a man that does most everything that comes up to do in the way of helping out when he is in there. He may help see that a man gets his tobacco down on the floor satisfactorily and see whether or not the trucks handle the tobacco properly. And he may help a grower to see about the sale of his tobacco and if the grower is dissatisfied with the price and is thinking about carrying it to another market, he might put

in another row and have it resold for him at a price satisfactory to the grower. I hired him in March. And W. C. Kicklighter, he was my preacher. He was a trade man, I hired him in March. In each instance I agreed with them for the price that they would work for. I always do that; I don't ever hire a man and tell him I will decide on what I will pay [fol. 401] him later on. At that time it was necessary to estimate the number of men I would need. I know approximately now what I will need for another year. In Tifton, for instance, I will need practically the same force as this year, but it might not be all the same men, but I have got to have a certain number of men. I don't think I have overestimated or under-estimated for the season. I try as hard as any man in the world to keep my expenses down, and then they run away with me.

I was connected with the Triple A during its control of the Tobacco Warehousing Industry in Georgia; I was chairman of the Board. At the time the code for tobacco warehousemen was approved in 1934, the scale of prices to be charged was set out in that code. I will state in connection with that that I went to Washington on two or three different occasions and was in conference with Mr. Hudson and his associates in trying to work out and in deciding on this code. The Secretary of Agriculture had power and authority to set the prices in the respective belts. The same old prices were set for Georgia, the prices we have been using in Georgia, and North Carolina the same thing, in South Carolina the same thing and in Virginia the same thing. I mean by saying the same thing, the same charges that were being made at that time and prior to that time, and that those were the charges that the Secretary ruled that we should charge. There was no protest filed or any opposition to that scale of charges so fixed at that time. I never heard a word about it. With reference to any complaint or protest in Washington, the farmers were given an opportunity by the Secretary to appear there as to the charges, and we had no protest from Georgia, North Carolina, South Carolina, Virginia or Kentucky. The only protest we had—there was a farmer there, two on a committee—there was a farmer's committee who looked into those charges, and that was in reference to Tennessee where they charged a minimum and in Virginia where they have a burley market, where they charge a $1.00 fee regardless [fol. 402] of what it is, and if it doesn't bring but a cent a

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pound. If tobacco is very low the farmers might not get anything because it would take all the tobacco to take care of the charges there. And there was a protest about that and that was regulated. I have forgotten what it was. There was no objection or protest from Georgia. The old scale of charges in Georgia came to be charged in 1917 or 1918 in this manner: I think that the original warehouse that opened at Douglas had this charge the year that I went there, which was the second year I was in business with Mr. Peagrem and another man. I can't think of his name. We had two little warehouses in Douglas and two in Abbeville. They were the only two there. We had one set of buyers and sold two days in one place and two days in the other and a day intervened. The other man was named Lee and Peagrem and they were partners that year. I have never heard the charges discussed one way or another. We went down there and opend the market, and the charges that were taken off, I think, were the charges this man decided on the first year the market opened in Georgia. I have been operating in Georgia now, as I said, since 1918. I have never been to a meeting where they discussed the warehouse charges. There was no law regulating it, and as the warehousemen came into a market or opened a market they would take off whatever the charges were they had been charging on the other markets. There has never been any agreement among the warehousemen about the charges or to charge any specific amount as far as I know. I have never attended a meeting of that kind. In my warehouse I have charged the same scale of charges since I have operated in Georgia; 25 cents per 100 pounds up to 100 pounds for weighing and in proportion above that at the same rate, auction fees 25 cents a hundred, per 100 pounds, or less and up to 200 pounds, and 50 cents over that as a maximum. If it was 250, 300 or 400 pounds, it would not make any [fol. 403] difference. My commission was 2½%. That has been the uniform charges I have made ever since I have been operating warehouses in Georgia. From my experience as a warehouseman in Georgia, Kentucky and North Carolina, I think the scale of charges heretofore charged in Georgia is reasonable. In my operations in Georgia for 1935, the difference in amount of money between the old charges and the charges passed by the Act of the Georgia Legislature is $4296.98. I think that amount

figures around 18% of my gross income, or something like that, I would not say positively. The net income there shows that it would be practically one-half. The net income is $5296.00 and the commission sent up there is $4296.00, a difference of $1000, lacks $1000 of being one-half. If the scale of charges passed by the legislature had been charged by me in the years previous to the year 1935, I think instead of showing a profit each year I would, in all probability, have shown a loss or certainly would have had a small profit, if any at all. We did not know when we were operating our warehouses then that this thing was ever coming up, so therefore we were not loading our expense accounts. It would have reduced our income. It reduced it right there where it lacks only $1000 of being one-half for this 1935 operation. I think over a period of years where I have made profits, my profits would have been ten or fifteen per cent of what they have been. As to what factors enter into the earnings of a warehouse with reference to the pounds sold in his warehouse, the prices paid for his tobacco, etc., a man has to have a fixed expense because he has got to have a sufficient warehouse force to take care of the tobacco when it comes in and handle it in the proper way so as to see that the farmers will get the service that they are entitled to. And the volume of business is the only way of being able to do that; volume of business is the only way a man has got a chance to make [fol. 404] any money out of the warehouse. That 2½% commission comes in there also. For instance, if you have a thousand pounds of tobacco which is sold at 20 cents, your warehouse charges for weighing and handling and auction fees would be the same whether it is sold for 20 cents or more or less, but if it is sold at 20 cents, that would be $200 and the 2½% commission would be $5.00. If you sold the same lot of tobacco for 10 cents a pounds, the gross sale would be $100 and the commission there at 2½% would be $2.50, and $2.50 less than if the same tobacco that sold for 10 cents had sold at 20 cents. Now the work and the expense and cost of the warehouseman to sell that tobacco is just the same when it brings 10 cents as when it brings 20 cents. To give an illustration as to this 2½% commission and how it figures out—of course it does not affect the weighing and auction fees, for they are the same regardless of what a pile of tobacco brings; last year in North Caro-

lina we averaged about 27 cents or 28 cents, and with our charges in North Carolina we averaged over $1.00 a hundred pounds. Now in Georgia, while we use the old charges and tobacco was around 18 cents or 17½ cents—I think it was 17½ cents but I don't know positively, but our charges were about 95 cents. In comparing Georgia with North Carolina, due to the difference in the average price of tobacco, the North Carolina charges made me more money. Our warehouse charges have nothing to do with the prices of tobacco that the farmer is paid for it, but the more tobacco brings the more warehouse charges there are and the more the warehouseman receives, per hundred pounds. For instance, last year in North Carolina we were averaging at this time 27 cents or 28 cents per pound on tobacco sold, and we were getting over $1.00 per hundred pounds for selling that tobacco including all the charges, the 2½% commission and the weighing fees and auction fees. All that amounted to over $1.00. This year we are selling to-
[fol. 405] bacco around about 18⅛ cent average and our charges are hardly running 80%, but of course we had a bigger volume of business this year. We have got more tobacco.

In operating a warehouse in Georgia, the cost of operating per one hundred pounds was larger than for one hundred pounds of tobacco sold in North Carolina. The cost or expense to the warehouse per one hundred pounds depends on the number of pounds sold. The profit to the warehouse depends to a large extent on the price and the number of pounds too; they both enter into it. The average price that tobacco sold for in my warehouse in Georgia in 1935 was 19.81 I think. It is in the list there. They are all there in that Georgia report, and it was 19.74. The net profit under that price was $5,296.95, and the commission sent to Macon was $4296.98, making approximately $9500.00. If the average price had been 10 cents, you could take off about 18% of this $26,134.79 commissions, which would be something over $4000. The price paid for the tobacco figures largely in the amount received by the warehouse. In other words, if we had sold tobacco under the new charges instead of showing $5296.95 profits, I would have showed only a little over $1000 profit. If it had been sold at 15 cents per pound as an average, it would have been proportionately larger than at 10 cents. The corp of

workers for the 1935 season was the amount necessary to handle the poundage I sold. If the poundage had been less, it would have had no effect on my organization except on common labor. It costs over 50 cents a hundred to handle this tobacco. In other words, the payroll for 1935 for common labor is $1576.71, and we sold 2,691,896 pounds. There is a lot of common labor that you have to keep there in the house to take care of it when it comes in. You cannot let them all go, for you don't know when it will come in and rush you. Only two or three loads may be coming in and then twenty-five or thirty minutes later forty or fifty are [fol. 406] there. It would not have any effect on my skilled labor. They just would not work as hard, that's all, but it would not save me any money. After we had sold the tobacco in Georgia in 1933, we opened in North Carolina and the prices were very low, about a 10 cent average. On Thursday the farmers held a mass meeting in Raleigh, probably 7000 or 8000 farmers were there, and they passed a resolution appointing two committees. One committee was to go to see the Governor and ask him to close the warehouses up until the other committee could go to Washington and see if they could not get some relief on those low prices. That was on Thursday. On Thursday night, about 11:30 P. M., the Governor called me over the telephone and told me the committee of farmers had been to see him about closing the warehouses and he told me that he had no authority under the law to close the warehouses up, but asked me if we would cooperate in accordance with their purpose. He asked me if the warehousemen would close the warehouses voluntarily, but he first asked me if I would close mine up and I told him I would be glad to if the rest would. Then he said, "What do you think about the rest of them?" And I said that all intelligent warehousemen would recognize that it would be best for their interest and would be willing to close up, because the farmer's interest and the warehousemen's interest go hand in hand and the lower price the farmer gets, the less the warehousemen gets, and the higher, the higher. In response to that request, I will say that we closed all the warehouses in the state and I was appointed on a committee to go with the Governor and a committee of farmers, and Georgia was represented, to Washington to see if we could not get relief to assist us. They asked for our suggestions and we made the sugges-

tion to put on this set-up for the acreage control and they did not think very much of it at first. We stayed there a couple of days, because they said that was the length of [fol. 407] time it would take, and finally they did agree to it, and to put it on. We were to stay closed until the- finished the sign-up which included Georgia, South Carolina as well as North Carolina. Georgia at that time had sold their crop of tobacco. After we got that through, I was appointed on a committee up there to discuss with Mr. Wallace and Mr. Davis something in reference to the amount of tobacco that the code would allow. And it was also brought up in reference to how that was going to help prices which we determined it was going to do by closing the markets which had already been done and putting on this sign-up. In other words, that would help the prices of tobacco when we opened up. Somebody, I don't know whether it was myhelf or not, but somebody said something about the Georgia farmers having already sold their tobacco and that therefore they would get no benefits from this. And it was discussed pro and con and finally the suggestion was made about this processing tax, and they took some of the money or will take some of the money from that and pay the Georgia farmers back a per cent on their tobacco; and finally that was agreed upon at 20%, which made about one million five hundred thousand dollars or one million six hundred thousand dollars, which on the basis of the 2½% commission, if the warehousemen had gotten on tobacco sold, would have amounted to about $35,000 or $45,000. But we did not ask for it and did not think about it. As a matter of fact, I for one did not want it. What I was trying to do was to see that the farmers in Georgia got some benefits from the thing that we had done up here in North Carolina. As a result of that the Georgia farmers were paid an additional 20% for their crop that year. That money did not pass through the warehouses. The warehousemen did not receive anything on it; I did not. Of course I considered that a benefit to the farmers. Take $1,500,000 to be divided between them, which was something just like they had picked up, and something they never would have gotten if [fol. 408] we warehousemen had not closed the houses and gone up there with the farmers and asked for this sign-up. In that way we got an agreement from the companies to pay a parity price which was about 17 cents and they stipu-

lated on the amount of tobacco they would buy from the 1933 crop. I can't tell how many grades of tobacco are sold on the Georgia market. I cannot state how many are sold in North Carolin*d*, but I think more grades are sold in North Carolina. In fact I am pretty sure more grades are sold in North Carolina. That is because they grade the tobacco closer, and that makes the piles smaller in North Carolina. The fact of it not being graded has an effect on the price. As a rule they do not pay as much for ungraded tobacco as for graded, and when they buy ungraded tobacco it has to be graded and separated. When tobacco is sold ungraded, you will find probably six or seven and even as high as ten grades in a barn, and if you select the grades and put them together in say 12 or 15 leaves in a bundle, why in doing that you naturally knock a lot of dirt off and the price for grading is $1.75 per hundred, but sometimes it costs $2.00 per hundred. The Georgia farmers are not required to do that and they do not do it. I have come to the conclusion that the Georgia farmers, and I know it, do not average as much as the North Carolina farmers, because for graded tobacco you get more money, dollar for dollar, but the Georgia farmer does not have to go to the expense of grading it, and in the second place, he sells a lot of dirt that we don't sell in North Carolina where we take it off the stick and separate it leaf by leaf. That knocks the dirt off it. Down in Georgia they don't grade it, and up in North Carolina they grade it by leaf. Generally speaking, the tobacco farmers in Georgia do not have pack houses. They have not made the preparation for taking care of tobacco in Georgia like they do in North Carolina. It has this effect on the marketing of tobacco; it keeps them from being able to grade and keep and take [fol. 409] care of their tobacco like they do in North Carolina. Unless the grower is prepared for it and has a place to put it in to odor it, why they cannot handle it properly. I have noticed a great many of the people in Georgia having their tobacco in their residences and putting it up in their regular barns. I don't think that has any effect on the growers in Georgia hurrying tobacco to market; the farmers in Georgia are like the farmers in North Carolina, in Kentucky and other states, and when the market is open, they sell it. We are rushed some in North Carolina and still it is necessary to keep the markets open there until

the first of April or first of March. The buyers are resident buyers and have been living in North Carolina a great many years, and when the tobacco is ready for market and the farmers are going to sell it, the warehousemen cannot afford to refuse or not to sell it. And the warehousemen cannot afford to advise a farmer to sell or not to sell because he don't know whether the market is going up or down. If you advise them wrong, you would be out of luck; and if you advise them to sell it, and tobacco went down, you might be all right, but if you advise them to sell it and tobacco went up, it would be just too bad for you. Climatic conditions naturally causes tobacco to damage when it gets too high in odor. The more moisture you get your tobacco in, the more apt it is to be high in odor. If, during the marketing of the tobacco in Georgia, and the season is usually the hottest part of the year in Georgia and usually at a time when it will rain a good deal, which causes the tobacco to get high in odor—you cannot carry that sort of tobacco over from one season to another. If you do, it will lose its color. It will redden in light which affects the price of it.

Cross-examination:

The hauling of tobacco to market in the early morning when there is dew, would not have anything to do with giv- [fol. 410] ing the tobacco a high odor. I was talking about a packing house and where it rains and where the air in the packing house has no chance to circulate and permeates or penetrates the tobacco. So far as the climatic conditions are concerned, hauling it to the market at night or in the day time don't affect it unless you get caught in a rain. I reckon you would call me a man with wide a varied business experience, although my whole life has been spent in the tobacco business. I have tried a few things on the side but I have never given up the tobacco business. That's my line of business. I have engaged in the business of farming, warehouse business, and selling drugs or medicine. I bought a formula for a patent medicine some time ago, and maybe I will live on patent medicine row in Atlanta yet. It is a tonic for dogs. I am a member of the North Carolina General Assembly; have been a member of it since last November. That is the only public office I hold in the state. I was on the Finance Committee, but I don't know

why. I kind of traded a little bit, and you know how they do up there. I voted for the speaker that won out. I did not feel that he put me on there because he thought I was so smart. I was recognized as a man so familiar with the tobacco industry that I was made chairman of the tobacco code authorities. I was so recognized as an authority on the tobacco industry generally that the Governor of my state called me up personally and discussed with me the propriety of closing the warehouses in the emergency. I can explain that too. The man who my Governor ran against was a townsman of mine and yet I voted for the Governor that got elected and practically all the other warehousemen voted for my townsman, and the Governor knew I was supporting him for Governor against a man who had lived in my town for twenty years. And he knew when he called me up that I would tell him straight. Some of the other warehousemen are smarter than I was, but he knew I was a friend of his and that I would advise him right [fol. 411] about the tobacco business; and he comes from down here where they raise Irish potatoes. I don't know whether I am a good politician or not; I made a good guess. The fact that I was successful in my candidate for speaker of the House would not be smartness; I just guessed right; it was just luck. I don't know that it requires on the part of a warehouse operator a considerable amount of executive ability. It is like any other business. Of course you should know something about the business to be able to keep your overhead somewhere in keeping with where it should be, and to anticipate as near as possible what amount of tobacco you have a right to hope to sell. Just like a man in any other business, you have to try to keep your overhead somewhere in proportion, which will give you a reasonable chance to make the profit that might be made from the warehouse business. I want to say this: not all warehousemen are fine warehousemen. I don't think all of them are good warehousemen, and most of them, as a general rule, are men who have originally been farmers or from the families of farmers, and have not had the opportunity of going to school and studying books or going to an Agricultural College to try to learn tobacco or how to run a warehouse or a tobacco sale. What they have learned about running a warehouse and selling tobacco, they have got from a lot of practical experience and no education at all. Now the

way they start, some of them, is they will come in from the farm and follow a mule to town, and maybe they will see a son of a farmer or grower who has got some influence, or they will be popular with the farmer and some warehouseman will give that fellow a job as a solicitor and he will work himself on up. The fact that he was raised up in tobacco and the knowledge he obtained in that way is worth a great deal to a man in learning the values of tobacco and the different grades. He can do it much faster than the man here in town who never had anything to do with it. [fol. 412] Now this boy will come to town and weigh tobacco and work on the floor and watch our sales, but before that, he will come in with his father, or relatives when they bring tobacco in and will watch how things are run in the warehouse, so that he is raised up in that atmosphere. Then he will follow that by training in the warehouse. I do not think it requires an extremely brilliant business man to be a good warehouseman. He does not have to deal with all of the elements that denote executive ability; the only elements he has to deal with are that he has to have a fairly good knowledge and judgment of tobacco, and a good manner, and forcefulness about going after tobacco and getting it for his warehouse. In my judgment he has got to have the interest of the farmers at heart first, and in the second place, he has to go up against very, very strong competition. I have heard it said here that the warehousemen do not have to compete. I do not know of anybody that has to fight any harder than warehousemen. They have combined in this law suit, but that is a different proposition. They are all organized in their union or association. The lawyers also have a Georgia Bar Association. I have heard it said that the warehousemen have combined, but that is not true, and I am trying to show that. They have this warehouse association for the very same reason that the lawyers have a Georgia Bar Association, and that merchants and doctors also do. You try to promote your professions on a high basis and whereby you can make a decent living out of it, and to get out of it those fellows you do not want in it, and to have in it the kind of men you like to have in your profession. That's why the warehousemen organized. We never organize with reference to telling a man or men the salaries we should pay or the charges for selling tobacco. Those things have never been discussed in

the association so far as I know. That is not a proper subject for discussion. I know that we warehousemen are not as smart as lawyers are, and we could not go so far as [fol. 413] to fix a schedule of charges, as the Bar Association does in fixing a schedule of fees. I don't think it is just by chance that the warehousemen happen to have the same fees. It is good business judgment, all right. I went to Kentucky a perfect stranger and never had been to Kentucky before in my life, and never went to a warehouse meeting there in my life, and when I got ready to take off the charges, I asked the men employed what the other houses took off in Kentucky, in other words, what the charges were in Kentucky. I did not want to be a cut-throat warehouseman, and did not want to open up on that basis. A warehouseman is entitled to a fair profit, but this warehouse association in Georgia, although I never attended many meetings, didn't discuss uniformity of charges. I am not president of the association. I organized it and was one of its first presidents in North Carolina. I was president twice and took an active part. I am not president in Georgia. I didn't organize that association; didn't have anything to do with the organization but I thought we ought to have it. To show that it is not only for the benefit of the warehousemen, but that it is for the benefit of the farmers, we always try to help the farmers in any way we can about the crop or the prices of it. I don't think that reducing warehouse charges helps the farmer. It costs him less to market his tobacco if the charges are reduced, but what is always best for the farmer is best for the warehouseman. I may say that no decent, respectable warehouse is going to stay in business unless they make a fair and reasonable profit. When you cut the charges down that they can make in Georgia below that, perhaps you can still get plenty of men to run your warehouses, maybe for one-half of what this Legislature passed, what the Act calls for, but what every farmer will gain by that reduction of charges, on every dollar he will lose ten dollars somewhere else because of inefficiency. I have not heard two-thirds of these fellows testify that they have been [fol. 414] losing money in Georgia. I think 75 or 80 percent of them lost money in 1932. I just happened to be lucky.

I said awhile ago that if I had employed somebody to do

what I did and to take my place and run it for me, the chances were I would have been losing money all along. I attributed the fact that I made money to my own superior executive ability. I failed to be modest to that extent. The fact that I made money when others lost it was due partly to their not having proper executive ability, but the main reason was that I was lucky in 1932 and I don't know how the rest of the warehousemen were fixed, but I was down in Georgia on the ground. I didn't hire any large force that year, and didn't run up much expense in using automobiles in Georgia because I was there when the blue mold struck them, and I held off and did not hire a man. I did not hire my force in Georgia until three weeks before the market opened, and where I had been paying an auctioneer $800, I paid this man $200 and everything else in proportion. It would have paid the entire industry to have waited until close to the season before hiring help, but it was not so smart. I did not have any house on a standing basis for which I had to pay flat rent. I was paying so much per thousand pounds, and the owner of the warehouse got very little out of it. I only sold less than one-half million pounds of tobacco. I never heard of any renting on that basis in North Carolina; none of them did so far as I know. I have never heard of it, even in recent years. I owned my own warehouse, and for that reason I did not come in contact with the question of rent there. I know on what basis they are rented in North Carolina. They rent on a flat basis so far as my knowledge is concerned. I pay $5000 rental for the warehouse in Moultrie. It wouldn't rent for the season in North Carolina for $700 or $800, it would be $750 or $800 per million pounds and they sold a little over two million pounds and that house rent in North Carolina would be about $1500. The cost of construction of warehouses in North Carolina would be [fol. 415] practically the same as the cost of construction in Georgia. Both states have access to the building materials at about the same cost and have about the same wage scale. The fact that I am paying in Moultrie a higher rent for a warehouse than I am paying in North Carolina is evidence of the fact that the farmer is having to pay more for his warehouse charges than he ought to pay by reason of the higher rent, so far as Moultrie is concerned. The other two warehouses are rented on the basis of the number of

pounds sold and they are not on a guaranteed basis. They are poundage propositions. Generally speaking, I think the rent in Moultrie is high. Mr. Vereen owns the biggest part of it. I would not say that generally over the tobacco belt of Georgia rents are about the same as in North Carolina; they are some higher. The extent to which they are higher is not excessive. They are higher for this reason: for instance, at Tifton I paid over $3000 for rent for a house for 30 days. I had a house over here at Goldsboro, N. C., which I rented and I paid for it $4000 for twelve months, and sold two and one-half million pounds in Tifton and four million pounds in Goldsboro. I occupied the house considerably longer in Goldsboro, I had the choice of it for twelve months and had the chance to rent it, and the house I rented in Georgia I rented that for only thirty days and then turned that loose. Now, take the house in Blackshear; it belongs to Mr. Morgan's mother and our rent down there was something over $3000 for the season and we turned the house loose. I don't think she rented it but the fact that it was such a short season brings out the fact that it cost you more to sell the tobacco per thousand pounds. The rents in Georgia are excessive for the amounts of tobacco we sell. I would not say they were excessive practically two-fold. I should say that a house that sold two and a half million pounds of tobacco should cost you $2,200 to $2400; no, not that much, $2000 to $2200. Now, that's on the basis of sell- [fol. 416] ing two and a half million pounds of tobacco and it costs $3000. I should say the rent of the warehouse in Moultrie at $5000 is excessive, not quite the ratio of two to one, maybe $2000 more than it should be. I charged that rent up in expenses, in fixing a rate to be charged to the farmer. The farmer is not charged excessively to that extent, we just knock out that much profit which ought to be made. If the rent was lowered, I should divide the $2000 up between 200, 300 or 400 farmers. Rent was one of the items I spoke of which caused the expensiveness of the operations in Georgia; that is one of the things that in some instances made it more expensive. I did not speak of it though except in the case of Moultrie. I don't know of any other places in Georgia of my own knowledge where the rent is anything like as excessive as at that house. When I said that it belonged to Mr. Vereen, or that he owned a good part of it, I did not intend by that any reflection on

Mr. Vereen. He was just the kind of man generally that looked out for what belongs to Mr. Vereen. I am not criticizing him, for I am a great admirer of his. Another thing that caused expensive operation in Georgia was board and room rent for my men; I paid some of it and some of it they paid. They don't go down and put up at the best hotels in town. Most of them do not stop at the Myon Hotel in Tifton; one man does, Mr. Wethersby, my partner. Most of them put up there in a Greek restaurant, and some of them in private homes in Tifton, that is, different houses in town where they rent rooms. Where they got into private homes and rented rooms, they had reasonable accommodations; they have got some nice private homes in Tifton. I think it costs more to live in a private home in Georgia than in North Carolina. I never heard of it costing only $20 to $25 a month, not for a tobacco man. I took one man down there with me voluntarily to let him buy a little tobacco and took him out of sympathy. He got in an accident and his child and wife were killed, and when we [fol. 417] got there I told him to go out and find a place to live, and I know this fellow found the cheapest place in town anywhere and his room and board were $37.50 a month. That is not attributable to the generally known fact that a man or men connected with the tobacco marketing business make excessively high salaries; I don't know about them usually riding in big fine automobiles. The most of them I see down there, or at least a great many of them, employ Fords, Chevrolets and some of those they buy second handed. I drive a Plymouth myself. I think it is because we have got to have somewhere to eat and sleep, and we have got to pay the price. I don't know it to be a fact that they hold us up for it, but I think so, to be frank. The fact that local people in towns where warehouses are located charge too high board doesn't enter to any large extent into making the warehouse charges in Georgia. All these things I have named, like board and room, are not minor things. A major item that enters into it is paying 8% for your money and another one paying ¼ of 1% exchange instead of 1/8 of 1% and in some instances 1/16. Another major item is the fact that an auctioneer like I would want to use that would cost me $550 to $600 in North Carolina would cost me down in Georgia around $800 for a month. $200 for an auctioneer is very nominal, but I was just saying

that that was one of the items that enter into it. I don't know that I can say any of them are major ones by themselves, but all of them added together makes a good large amount. I want to operate my warehouse just as cheap as I can to give good service. I never knew this thing was coming up so it cannot be said that I have added any expenses to make a showing and my figures will show from the statements here that per pound or per hundred pounds it cost me a great deal more to sell 100 pounds of tobacco in Georgia than it does in North Carolina. I curtailed my expenses in 1932, and stated why. I made a profit then, but I did not know whether I was going to sell any tobacco [fol. 418] or not. I met the emergency of 1932, but my house was rented on a poundage basis and I also met it by not hiring my men until about three weeks before the market opened. If this new rate is put into effect, I would not meet that emergency just as I met the emergency in 1932. When I get to the point that I cannot give good service as a warehouseman in Georgia, I will quit operating a warehouse down there, and operate in North Carolina and Kentucky or some other states. I am a little conscientious and I have stuck by the thing all during the time when Georgia has been raising a small amount of tobacco. Even at those times I carried the best auctioneers and book men and clip men and skilled employees I could obtain in Georgia, in other words, the kind I was using and willing to use in the business in North Carolina. As matter of fact, I did use in North Carolina the same men I carried to Georgia. One of my partners in Georgia is one of my employees in North Carolina. I pay him $400 salary per month in North Carolina. On the new charges, I think the business made in Georgia about $6000, and he made one-half that profit in Georgia. He did not make $3000 in thirty days, because he went there the first of May and stayed until the market closed. He made it in 90 days. He was acting in a different capacity in Georgia than in North Carolina. He was pay off man in North Carolina, and in Georgia he was running the sale. I devote some of my time to my warehouse in Tifton. I actually stay down there probably six weeks. During that time I was in Moultrie only four weeks and during the time the market was open. I was down there several times before it opened. During the market I went over to Moultrie two

or three or four times a week, and sometimes spent half a day. I spent six weeks divided between Moultrie, Tifton and Blackshear. The time I spent six weeks' time between the three warehouses in Georgia, was the time I was in Georgia in connection with the actual operation of the warehouses, [fol. 419] and does not take into consideration the time spent in drumming up business which is one of the most important things. It requires executive ability to run a warehouse, and especially to see that three are running.

I did not divide the six weeks actual time I spent in Georgia between the three warehouses on an average of two weeks for each warehouse; I stayed a good deal more in Tifton than at the other two. My total profit from the three warehouses, or my part of it, covered my reward for six weeks work in Georgia and whatever planning time I gave to it in North Carolina, which was a good many weeks. During the time I was planning, I was giving time to my other business during the time it was in operation, but my warehouse in North Carolina closed on the first of February and after that time I was looking after getting my arrangements made and my program planned for the Georgia market. My warehouse business takes up the full twelve months in the year, the way I have been scattered. I start in Georgia, and then come into North Carolina and from there I go to Kentucky, but I gave very little time to Kentucky because my North Carolina markets don't close until the first of February and the Kentucky markets have been closing about the middle of February. The total amount of income I make out of the tobacco industry for my time, skill and experience and my investment would have to include my profits on the three warehouses in Georgia and my profits in North Carolina and in Kentucky. By arranging a short season in Georgia, I am able to come immediately into the North Carolina market. If there had not been a short season in Georgia, I would not have been working in Georgia; I would be warehousing in Georgia. I would forget the North Carolina market in which my profits are greater and where my home is in the interest of warehousing in Georgia, where the profits are less, in the event of a conflict in the two seasons. I would stay in Georgia myself until the markets opened up here, and then [fol. 420] I would have my men look after things down there, for I would have them pretty well lined up to handle the

business by that time. I don't think that in that event they could handle it as successfully as I could. I don't think that they could run the business as successfully as I could but after it was started off they could sell tobacco as good as I could. The shortness of the season works to my advantage, in that it makes it possible for me to give personal supervision to both markets. If I could not stay down there personally, I would stay long enough to get them started. I have a big organization and I try to protect the growers by trying to get what I consider the best men and men who are as competent as I can get. That's just like I do in Kentucky where I give my warehouse very little time. I mean I would do that in Georgia. I got a man of that kind for Kentucky and he has been up there with me ever since I have been there in Harrodsburg. He comes and goes over with me every year the program we are to follow and that's the kind of man I say I would get for Georgia. In my judgment I can pick out competent men and men who will profitably operate with me and follow out my program for doing business on the same business basis as I operate and have always operated on. One of the first things I teach them is that their first obligation is to look out for the farmer and to see that the farmer gets the market price of tobacco. It is to my interest to see that the tobacco brings a high price, but I can say this and hold up my arm or my hand and say that that is the last thing we think about, what I am going to get out of it, because I am trying to get every dollar for the farmers. Naturally, when we raise the price for them, it helps the warehouse to some extent. I feel, however, that I am under obligations to the farmers who sell at my warehouse to see that they get the best of service, certainly as good as any given at other warehouses. Of course, a farmer has the privilege of selling at any warehouse, and when he picks me out, in most instances [fol. 421] when he does it it is because he has got confidence in me and because he thinks I can get him as much or more for his tobacco than any other warehouseman; so I don't want him to be disappointed, and that is what is in my mind, to manage my warehouse so he won't be disappointed. Therefore, when I am selling tobacco, the commission to me is the last thing I have got in mind. I stated awhile ago that in the event these charges are put into effect, it would cause me not to make a profit sufficient for me to stay in business in Georgia. I did not state that my prime con-

sideration down in Georgia has been to help the farmers. I was asked, when I was going to buy tobacco in my warehouse, if I didn't try to increase the price because I could put more money in my pocket, and I said that was the last consideration in my mind. I automatically know that when the farmer gets more, the more I will get out of it. It is true I am in business in Georgia for what money I can make out of it. I have not said I was philanthropic, but I think I can say this, that although I have been one of the pioneer warehousemen in Georgia and think that I have done as much as I could and as most any man to make the tobacco business a paying industry in Georgia, that if these new charges are put into effect, I do not think I will stay in Georgia. I know it will result in a tobacco warehouse business that will have to be run inefficiently and I am not going down there where I cannot make money. I would not swear I would go out of the warehouse business if the court sustained these charges, but I think it would be very likely that I would. I can leave any time I want to and there is nothing to keep me tied there, and I would feel free to do so when I could not make any money. That would not be true with the other warehousemen who has signed leases. I testified on direct examination that my tonnage or volume had a great deal to do with whether my warehouse business was profitable or not. The total volume in Georgia this year was approximately seventy-one million pounds. There [fol. 422] are forty-four warehouses in Georgia. If 44 warehouses handled 72,000,000 pounds, and there were only 20 warehouses handling it, it would naturally increase the volume of each warehouse. A warehouseman in that event would make a great amount of profit. In the event the statutory charges go into effect, I think the warehouse industry can meet those charges by eliminating the people in the industry whom I have testified were not competent and that would automatically increase the volume of the other houses with fewer houses. And I think, when you do that, that you would be doing something you don't want to do. You are eliminating warehouses and making it that much more expensive and that much longer hauls and much more inconvenient for the farmers to sell their tobacco. I would be glad to see it; I would make a deal this afternoon that if you would eliminate one-half of the warehouses in Georgia, I would have nothing to say about the warehouses charges. I don't know that you would have to eliminate enough

warehouses to cover the percentage the charges have been decreased. The warehouses that are operating in Georgia are scattered around and put there for the convenience of the farmers themselves who asked for them and sent a committee probably to obtain buyers and who have demanded that their markets be kept open. They are still asking for them down there now, and they will continue to fight to keep their markets open. That is the farmers as well as the business men. They are just as anxious for it as the business men. I am talking about the farmers in the tobacco industry and not the business men in town who may be farmers. If you will eliminate enough of the warehouses there in Georgia so as to materially increase the volume of business to those which run, as I have contended all the time, you can get along without the old charges, because the volume of business will offset it and you can make money out of your small charges; but I don't know whether it [fol. 423] would do the farmer any good. I have not figured the income and net profits shown on my statements for this year, by the statutory charges. I guess if it figures 16.4% less that what it would be with the old charges, it is correct. To whatever extent on the average that my income is decreased by reason of the statutory charges, to that same extent if you eliminate warehouses the remaining warehouses would have the same profits even under the same expense of operation. That's why those markets like Adel, Hahira, Pelham, and a great many other small markets probably cannot exist under the new rate, and that is exactly what the farmers don't want. I am sure of that. I think Blackshear is from 35 to 40 miles from Waycross; I am mistaken, I was thinking of Douglas. Blackshear is only nine miles from Waycross. I suppose there are paved roads leading every way, but the farmers want the markets. When I go into a town, I do not try to stand in with the business interests by joining the Chambers of Commerce or things like that. That is not a general charge shown by the records of my warehouse, these Chamber of Commerce donations; not in mine. I belonged to the Tifton Chamber of Commerce once for two years. I never have attended a meeting and if they have anything like a newspaper campaign or anything of that kind to boost the town as well as the market, I give them a contribution. The consolidation of the markets or the warehouses in Georgia is only going to come about as a result of necessity on the part of the

warehousing end of the industry. It will never come about voluntarily by reason of the strong pressure of the business interest to retain the market, but I don't think it is altogether the business interest. On the other hand I think the farmers are a great deal responsible and I also think that the little difference it would make individually to the farmers between the old and new charges would be lost by them in expenses of taking their tobacco to the markets. Even if it is only a few miles further, I think that is going to be [fol. 424] unpopular in South Georgia. That has not already been started. At one time they had a market at Bainbridge, and they dropped it; they dropped it themselves. The buyers didn't drop it; they never refuse to go there, as far as I know.

I don't know whether it was dropped by the warehouseman or not. I didn't hear the gentleman testify who operated there. The market at Bainbridge closed up; why it closed, I don't know. I presume it was closed because they did not sell sufficient tobacco there to justify them to run the warehouse. I think probably that is correct. I don't know that the warehousemen did not drop the Bainbridge market because of anything except losses. I presume if they had been still able to make a profit, they would be there now. I have not talked to them about it, and I don't know why they left. The Cairo market has been dropped; also the Thomasville and Camilla markets. The tendency in Georgia has not been to drop out the smaller markets and towards consolidation into larger markets; that had nothing to do with consolidating. The tendency to drive them out was because they raised so little tobacco in the territory it just would not run a market. In Douglas there are five warehouses. If you drop two or three of those warehouses, of course the volume to the other warehouses there would be increased, but that would be doing exactly opposite to the way the farmers look at it. They feel that if they have more competition that it will naturally help the farmers and the farmers get the benefit of it. I think that's all right myself. If we could close two in Tifton, I would be tickled to death, I am going on the theory of what is best for the farmers, on the way the farmers would look at it. I suppose he would be in the tobacco industry; he is the producer. The Douglas market has a certain number of buyers, but those buyers won't stay on that market

whether there are two, three or four warehouses; they won't stay there unless they sell enough tobacco to justify [fol. 425] two sets of buyers. If they sold enough tonnage they would keep on, I suppose. If there were only two houses there, we would still have the same number of buyers there if we sold the same tonnage. That's common sense, but I still say you are going on a thoery there that you would not want done. I realize that you (Mr. Rivers) want done what is best for the farmers in South Georgia, and if they are going on and shutting up the warehouses, and putting the sale of tobacco into the hands of a fewer number of warehousemen, it would suit me the best in the world, but I don't think it would be to the best interest of the farmers to do it. I consider a larger number of markets to the best interest of the farmer, to a certain extent. I am afraid that fewer warehouses would ruin the competition between warehouses, and as they are now, they have got to give the farmer a square deal; and they have got to sell that farmer's tobacco as high as anyone else sells it if they hope to hold their trade. If I were asked about the elements that enter into the requisite number of warehouses on a given market, I would say the first thing that enters into it is the quality of the warehousemen who operate the warehouses. To a great extent the quality of the warehouseman depends upon the efficiency of his force. When it comes to the sale of tobacco, it does. Of course, in handling the business there are other things to be thought of, and you have to see that the tobacco is sold, figured promptly as sold, and that the farmer gets his checks promptly. There is just so much service you can give a man, even if there were only two warehouses instead of five, and your profits are greater. When a farmer comes in your warehouse, you have his tobacco unloaded as quickly as possible, have it weighed properly, have it put on the floor, and have it arranged on the floor properly, and when the sale gets there, have a good auctioneer and a good book man and clip man and good ticket marker who can keep up with the sales and figure those things out so the [fol. 426] bids and sale will be figured quickly, and the bills made out quickly and sent into the office where you have a very quick and efficient pay-off man who can take charges off and write this farmer a check for his tobacco so that he can go straight out to the Bank and get his money. That

is the heighth of your service. That is all of the things that can be done. Of course you can render efficient service with one warehouse on the market or a dozen. As to the number of warehouses that ought to be on a market, that is something I cannot tell. I can say this: I think there ought to be a sufficient number of warehouses on the market to take care of the tobacco as it comes into that market, in an orderly marketing way. On this report here Adel is shown to have two warehouses that marketed 2,529,613 pounds of tobacco, and Hahira, marketing an approximately light tonnage, had three warehouses. Under those conditions the opportunity for profits under the same executive ability and management was greater at Adel than at Hahira, if they sold 2,000,000 in two warehouses there instead of three. Of course they would make a greater profit. The number of warehouses in a given tobacco market will automatically be determined by the opportunity for profit in that market; that will enter into it, of course. If more warehouses come into existence at Tifton than are now in existence to such an extent that it will divide the volume to where I cannot handle the warehouse I occupy profitably, I would leave the market. I don't know that by the same token the emergency created by the statutory charges in reducing the opportunity for profit in a given market will automatically eliminate some of the warehouses in that market. I don't think the same principle would be involved. I think it would eliminate your first class warehousemen and you would get, if the warehouse business continued [fol. 427] to be operated, a class of warehousemen who would have nothing to lose or gain, who did not have anything anyway and who would consider that if they made a little it was all right, and, if he did not, he was all right. In other words, it would be fifty-fifty with him. Two-thirds of the warehousemen in Georgia are not in that category. I have not figured the percent, but I know quite a good many of them that are not in that class, and I will name some of them over. I will take the little markets; I will take Baxley. There is Mr. Hasley, of Rocky Mount, who had two warehouses there last year, which were leading warehouses. There is Mr. Clark, who runs a warehouse here in Wilson, who is considered one of the best warehousemen. There is Mr. H. P. Foxall, who runs a warehouse at Statesboro, and who has two warehouses in North

Carolina, and is considered a leading warehouseman in the business in North Carolina. I am not picking the best warehousemen on the little markets; I am giving the names of some of the warehousemen on the little markets who are not in the class you (Mr. Rivers) were talking about. I am trying to recall whether there are people who engage in the auctioneering profession up here, go down to Georgia and run warehouses; I know one man that auctioneers at my warehouse in Moultrie that runs a warehouse in North Carolina. I don't know that people are running warehouses in Georgia that would fail in running warehouses in North Carolina, or that people from North Carolina who are working up here on a salary and as auctioneers in the industry go down to Georgia and run warehouses; I can't think of an auctioneer up here that runs a warehouse in Georgia. I used to be an auctioneer on the North Carolina market. This is a kind of school in the tobacco business and auctioneering is a part of the business that it is a good thing to know. Good warehousemen don't necessarily have to have experience in auctioneering, but it doesn't hurt him a bit. An auctioneer doesn't have to have a winning personality; [fol. 428] look around and see some of them and you won't think they have much personality. I don't know of any auctioneer in Valdosta or in Tifton—there is an auctioneer that is in partnership with Mr. Smothers. He is a regular warehouseman, and he has a partner of his who has got an interest in the business. I think Mr. Smothers' auctioneer auctioneers tobacco at Rocky Mount on a salary. In some instances in Georgia you will find that in some of the warehouses they have taken an auctioneer in as a partner or have given him an interest in the business because it is cheaper than agreeing to pay a salary when you don't know what you are going to make. Of course the auctioneer feels like he is taking a chance of making more money than he would probably make on a salary. A situation where a business had been paying an auctioneer $300 and put one into a partnership at a $1000 salary would depend entirely on the man. I said this morning that I did not know exactly the total tonnage here in North Carolina for last year. I would say the average tonnage of bright leaf flue-cured tobacco in North Carolina for the average year would be around 325 million to 350 million pounds. I can't say how many warehouses we have in the bright leaf belt

in North Carolina. I belong to the association. I have never figured the approximate number. There are 10 warehouses in Rocky Mount, 9 in Wilson, 9 warehouses in Kinston, which makes 28, 9 in Greenville—I am taking the big markets first—that would be 37. 3 warehouses in Fairmount, 4 warehouses in Fairmount; that would be 41. There are 2 warehouses in Tarboro; two warehouses in Oheskie; 3 warehouses in Goldsboro; 2 warehouses in Wallace; 3 in Smithfield and 3 warehouses in Wendell. I don't know whether there are approximately 55 warehouses operating in the bright leaf belt or not; I was counting them up in my own belt here. The average production in Georgia in 1930, the best year we had in Georgia, was 106,000,000 pounds. In 1931 I think it was 70 some odd million; 1932 there was [fol. 429] 12 million; in 1933, there was I believe, 66 million; in 1934, it was 32 million, and in 1935 71 million. 1935 is considered one of the best years in the industry down there, 1930 was in poundage but not in price. 1930 was the largest in tonnage and 1935 was one of the largest. According to those figures, in six years Georgia has only produced approximately 350 million pounds of tobacco. North Carolina has produced in one year approximately as much as Georgia has in the last six, on the average.

According to the figures given, North Carolina should have six times as many warehouses as Georgia, in order to have the same requirements in warehouses as Georgia. I don't know whether North Carolina has only two and one-half times as many warehouses as Georgia or not; I don't know that any of those figures are right; I haven't figured it. They have not curtailed the number of warehouses in North Carolina by reason of the natural history of the industry; there are just about as many houses operating now as ever. I don't know of but two or three very small markets that never did sell very much tobacco that were opened that are not buying and selling tobacco now. They just haven't gone and opened up markets. Here are five big markets here in Eastern North Carolina that sell somewhere about 300 and some odd million pounds. There is Wilson, Greenville and Rocky Mount. There are five markets up here. I reckon I must be wrong in my estimate on pounds sold, for the five markets here in 1933 together sold 250 million or 275 million pounds. We have three different belts in North Carolina, Eastern, Middle and Old

Belt. I live in the Eastern Belt. Mr. Foxall stated that there were 55 firms operating warehouses in the Eastern Belt, probably there are 20 more warehouses. I don't believe there are approximately 75 warehouses; I should say around 10 or 12 more than the 55, which would make it 65, approximately. I would say there are approxi- [fol. 430] mately 65 warehouses in the Eastern belt of North Carolina. I don't know the approximate average tonnage in the Eastern North Carolina belt, but I know approximately what it was in 1934, last year. Taking the years 1932, 1933 and 1934 together, 1934 would be an average year. In Rocky Mount we sold in 1934 35 million pounds; Greenville around 48 million, Wallace 48 million, Fairmount 20 million, Kinston 37 million, Goldsboro 8 million, Smithfield 8 million, Wendell 7 million, Tarsboro 4 million, Ohoskie 4 million, Newbern 2 million, Wallace 2 million, Robinsonville 6 million, Williamstown 6 million, and Washington 2 million. That is approximately 238 million pounds; that was the average production in the Eastern belt of North Carolina for the last three years, 1932, 1933 and 1934. Taking it back from 1930 it would not be an average, but I cannot remember back to 1930. I know it was a big crop, and this might vary several million pounds. That would be an average for 1932, 1933 and 1934. 1932 was not such a large crop; 1933 was a big crop, and 1934 was cut 25% from 1933. Back of that time they had larger production; they had a larger production in 1930. During the last three years, we have produced in the bright leaf belt of Eastern North Carolina approximately 238 million pounds per year. The 65 warehouses in that belt have sold a total of approximately 238 million pounds of tobacco. In Georgia 44 warehouses have sold only a total on an average of about 30 million to 35 million pounds a year for those years, if those figures are right. There are approximately 16 markets in the Eastern belt of North Carolina. After you leave the Eastern belt, you go into the Middle belt. There was a total of Georgia tobacco farmers crop averaging from 30 million to 35 million pounds to support 15 markets, whereas in the Eastern part of North Carolina, producing an average of nearly eight times that much, there were only about 15 markets. I say that the number of [fol. 431] warehouses in Georgia could not be materially reduced without doing violence to the farmers' interest, for

the simple reason that in the short time you have got to sell this tobacco that if you materially reduce them that every market would be rushed and overloaded until you would block practically all of them up, and it would create untold confusion in the warehouses. We would have to run with greater consistency, but that is not the only way to look at that matter. There are two sides to that question. We could not make the companies send more buyers down there unless they wanted to. We would probably have to run a longer selling season, but then we could not force them to send buyers. If the number of warehouses in Georgia were materially reduced, it would necessitate a longer selling season, and a longer selling season would make it impossible for the same buyers to operate in the North Carolina market. The longer selling season would automatically make it impossible for the other skilled men who work in Georgia to operate in both markets. The longer selling season would have no effect on the farmers bringing their tobacco to market without being rushed. I did not say North Carolina avoided rushing it; I said exactly the opposite. I said that farmers were pretty much the same about getting their tobacco on the market, and on my market in North Carolina that the farmers unload more tobacco at night than they do in the day time. During the last part of the season it still comes in at night. I have a night force in North Carolina during my four months period of operation, regardless of whether we are rushed or not. When a farmer comes in and wants it unloaded, we are ready to unload it for him. If he wants to go home, he can do so and come back and sell his tobacco. Then there is another thing that shows you cannot keep the farmer from rushing it. It is true we only had a little over three weeks, three weeks and two days, for a market-[fol. 432] ing season in Georgia in 1935, but we announced that we were going to close on a certain time, and during the last three days of our sale we had practically no tobacco at all; considerably less than what they had been selling, which shows that they rushed it through the market until it was practically all sold. There is no way I know of to keep the farmers from rushing their tobacco to market or from selling their tobacco, and no way that you can make them market it in an orderly way. They don't do it in Kentucky, North Carolina, South Carolina or anywhere

else, although they have about four months in Eastern North Carolina and only about thirty days for the market in Georgia. If they had sixty days in Georgia, or 90 days, they would do the same. In North Carolina we stay open until the first of April or first of May, if necessary, but after our market gets well open, it is rushed into the warehouse in very much the same way, and you can go around the warehouse about sixty days after it has been open and see a few farmers unloading tobacco, knowing that they are not going to get a sale in about two days, and then come back later and you would not know that it is the same place. There is not a great deal of difference in farmers in North Carolina, Georgia and Kentucky; they are about the same in marketing tobacco. There is not a great deal of difference in having to stay open at night to receive tobacco and in Georgia; we unload tobacco just the same way. The purpose of the Georgia Warehouse Association is to get the warehousemen organized, and get them set and advised on a date that we think that would be a proper time to open the market and send a committee to the United States Tobacco Association who sets those dates, and give them our reasons why we think the market should be opened at a certain time; and to conduct our business in a legitimate business way. We make no mention of what any salary shall be that is paid to any man or what or why our ware-[fol. 433] house charges are going to be, because it is taken for granted that the warehousemen, if they cut under the charges from what we have already been charging, that that isn't going to help them any because he can't give the farmer proper service and if the farmers can't get him out one way, he will get him out some other way, and that it will cost the warehouseman and cause him to lose his trade by doing that kind of thing. That has never been discussed in the meeting as a whole. And this year we accepted a voluntary quota agreement among ourselves that was practically the same thing as the code which we accepted from the Goverment. In this agreement it was stipulated that we could not hire trucks, and could not give a man any inducement to sell tobacco with us. Of course the main purpose of that was to keep our business on a legitimate business basis, and to see that every farmer, whether a large or small or successful farmer, got a square deal, and that there was not any favoritism to this man or

that. Now also in this code we have what is known as sworn-in weighers to weigh the farmers tobacco. We have what we call field men who the warehousemen pay to go around and check the scales used by the warehousemen several times a week to see that the scales are properly set and are weighing properly. The purpose of our association is to improve and promote the warehouse business, just like any other association, and the marketing conditions. The warehouse association has never given any consideration to eliminating the preseason activity that all the warehouses engage in; that is done in all tobacco belts. They used to be engaged in trucking and we eliminated that; that was one item of expense which we eliminated from the warehousing industry. In the event the statutory charges are invoked, the association could likewise eliminate to a great extent that pre-seasonal activity they engage in as an expense to the warehouses, but it would be just like a bunch [fol. 434] of fellows who are running for office. They can all stay at home and not make a speech. They could stay at home but they don't do it. When the warehousemen are doing that, they are soliciting business and we try to run a live wire business. There is nothing to keep them from doing it, and I don't see any reason for asking them not to do it. They are just like any other people selling their services. You might say that everybody is concerned and that you will regulate that. It would be like regulating the tobacco companies and saying to the American Tobacco Company, why do you spend a million dollars advertising. You could cut out that if every company would cut out all advertising and sell their goods on order, that they would know what they wanted. There is a certain amount of tobacco that has got to be marketed, but each man wants his part and some of the other fellow's if he can get it. If all warehouses would eliminate this pre-marketing expense, they would all be on the same basis. That is a considerable item of expense, it costs quite much. The local solicitors are not soliciting in South Georgia all of two months, but the warehousemen are probably. In Tifton I had Mr. Wethersby; he went down about the first of May and stayed down there until the market closed, and he had two men that he hired, trade men, and I think they started soliciting tobacco three weeks before the market opened. The high

price men in the industry along that line are the warehousemen themselves. By eliminating this pre-seasonal activity of soliciting on the part of all of them, we would eliminate two months' time of the high priced men in the tobacco marketing industry, but most of those men were not on a salary and they are warehousemen and they don't know what they are going to get in the way of a division of the profits. Naturally, they feel like it pays them to stay down there and do the pre-market work. We have never given consideration in our association to undertaking to [fol. 435] meet the statutory charges; we have never given consideration in undertaking to meet this statute to the elimination of the amounts paid to local farmers for their influence.

If all warehouses eliminated that activity and that expense, they would all be on the same basis, just like they are on the same basis after eliminating trucking. As to whether that payment to the local farmers for their influence in getting tobacco to a particular warehouse is a considerable item of expense, I think you should get that from the warehousemen individually, because I do not know what the others do. There is one thing in that connection that should not be overlooked and that is that these men usually work on the floor besides helping solicit tobacco. You have got to have those men on the floor anyway, but they are really employed for their influence and services in connection with bringing tobacco to the warehouse. If that were all eliminated, all the warehousemen would be on the same basis; you could eliminate the auctioneer and bookkeeper and let the farmers bring it in and weigh it and not go through an auction. I spoke awhile ago about a refund being given by the Federal Government to the Georgia tobacco growers last year; it was in 1933, I believe. There was also an increase in price given to the North Carolina tobacco growers. The tobacco growers were given about 12 to 16 cents, but that did not all come about right after the market opened. It finally went up by bringing that difference. In order to get that, it was agreed that there should be an agreement in all of the tobacco belts. They put on this sign-up campaign, and the Georgia farmers in order to get that refund, and in order to enable North Carolina and the other states in the tobacco belt had to sign the same contracts. The Georgia farmers had to do that, but I am almost sure of the fact that at the time the Georgia farmers

signed the contract, they did not know they were going to get anything back. I am saying that in favor of the Georgia [fol. 436] farmers. I don't know that they held mass meetings all over the Georgia belt, at which representatives of the extension department of the State College of Agriculture and the Demonstration agents represented to the farmers that they would be given a refund. That might have been true. But my remarks were complimenting the Georgia farmers in signing the reduction contract without knowing. It might have been that they told them. I thought they signed the contracts at practically the same time we signed ours up here. That could have been for I was not down there. By reason of all of the farmers in North Carolina, South Carolina, Georgia, Virginia, Tennessee and Kentucky signing the agreement, the warehousemen in North Carolina got an increased profit by reason of the higher price of tobacco later sold in North Carolina. I think Georgia's refusal to sign it would have avoided the agreement. That condition I have testified to only applied for one year. I was chairman of the A.A.A. Code; there is nothing to that any more. There was one Georgia tobacco farmer on that commission. If I am not mistaken I think he was up there several times while this was going on; I don't remember, but it was a fellow with the Atlantic Coast Line at Blackshear, John Purdom. He was a tobacco farmer. He was the Assistant Agricultural man for the Coast Line, but had his own tobacco. And another man that was looking out for the interest of Georgia was Homer Daughtry. He was not on the commission with me, but he was up there several times complaining. I did not say he was on the commission, but I said he was working for the A.A.A. department. There was not any tobacco farmer of Georgia on the Code commission. There was a farmers' committee on there, but I don't know who they were because I never met with them. This was a Warehouse Code Committee I was on. The notice that was given to the Georgia farmers about fixing warehouse charges was just a general understanding that in deciding on the charges that would be [fol. 437] charged in the respective belts, that all concerned, the farmers and everybody else, would be heard at this hearing in Washington at a certain time. Who they notified, I cannot state. I won't be positive that Mr. Purdom was there, but he was there at several meetings. He was there at the first meeting when we were discussing this reduction

program, and he is much interested in the tobacco industry down in Georgia, and has done as much for it as any one man. Whether he was there on this particular occasion, I cannot say. I don't know to what extent the Georgia tobacco growers, as a whole, had notice of the fixing of those charges. I don't know whether they had any notice at all of the actual date, time and place of hearing. I will say this, that I never heard anyone express an opinion about the charges that was not favorable. In fact, several told me that the amount they had to pay was very little and that they were all right even though collectively to us they amounted to a great deal. They were satisfied to pay us those charges. I have my statements showing expenses of operation from year to year, and will start with the 1935 statement. The first item is Martin Kirby, $220; he was a local farmer down there at Pearson. He wasn't employed chiefly for his influence, he worked there every day on the floor and did anything that came to hand. He was a local farmer solicitor. The next is A. V. Battle, $55. He was a boy I took down there trying to teach him how to auctioneer. That is what his board and room cost. The next is E. L. Ring, $547.40. He was not a farmer, but used to farm, and he lived at Hahira. He was a solicitor all the year. Martin Kirby over at Pearson was to solicit in territory in and around Pearson and anywhere he could get tobacco for Fenner's Warehouse at Tifton. It is around forty or forty-five miles from Tifton to Pearson, and about the same distance from Pearson to Waycross and other markets. I don't know whether it is 18 miles from Pearson to Douglas, or not; I have never been through there or heard anybody say. I don't know that [fol. 438] it is less than half as far from Pearson to Douglas as from Pearson to Tifton; it might not be but ten miles. I testified that one reason for having so many markets was to make them accessible; that they thought nearness of a market would be to the grower's advantage. I think too, it benefits the farmer to sell on a market that is close to him because it benefits him to the extent that he has not got that far to carry it. I don't recognize that in soliciting. I tell him that I will get him more money if he comes to Fenner's Warehouse if he lives three hundred miles from there. The next item is W. L. Guthrie, $210. He is a man Mr. Wethersby employed and while of course I probably knew the fellow was around, I cannot remember about him. I did not take him down from North Carolina, he is a Georgia

man. Allen Carrington was a solicitor and worked in the warehouse. He was a farmer; every one of them was farmers that we could get. Ring is not a farmer now but used to have two farms and lost them in 1932. I think the farmers lost during the lean years the same as the warehousemen had their profits cut down. W. P. Kicklighter was a Hard Shell Baptist preacher. I employed him because I thought he could control his congregation and influence them to bring tobacco to my market through the pulpit. H. B. Powers, $157.50; he was a farmer and solicitor. He lived south of Crosson out southwest of Tifton. C. C. Daniels was a solicitor. I think he lived over toward Ocilla. H. A. Thompson is a leaf man from North Carolina; Buck Avent is a ticket marker from North Carolina; J. C. Ruffin from North Carolina; H. B. Clark was a floor manager, from North Carolina. C. T. Vandiver, $250; he was the bookkeeper, from North Carolina. T. O. Peterson was a weigh mand and was a local man. E. L. Henderson, $100; he worked in the office there and assisted in paying off; he was a local man. L. H. Allison was pay-off man; J. Mitchell, $160, was a local man, weighman; J. P. Anderson, $800; he was auctioneer. I didn't [fol. 439] pay any taxes down there except city tax; that is a license, and of course we paid the Government licenses. All I paid were licenses and not any tax on any property down there. We just had the baskets, and did not return them; they never charged me any taxes on them. I have never caused to be segregated the amount I received on the 2½% commission and the amount I received on auction fees and the amount I received on weighing fees for these various years. It is on the bill; that has got auction fees and weighing fees in the 2½% commission and I show it as one figure separately by taking a total from the gross and show what that leaves, and it doesn't make any difference to me which way it comes. In order to determine how much my income would be reduced under the statute, I would have to figure those items separately for the different years. The 1935 statement figures it because I have paid it into court, but it would depend on what tobacco brought. In order to determine in any one year how much my income would have been affected, I would have to necessarily figure how much of my income was derived from commissions, how much from auction fees and how much for weighing charges. All this difference here is for the weighing charges and auction fees,

because the commission was not changed any. My commission account would be affected each year by the price of tobacco. In order to know how much my total income was affected by the new statute in any one year, I would not have to find out how much the commissions were and how much the weighing and auction fees were; the auction and weighing fees would be just the same as they were, the same whether the tobacco sold for five cents or twenty cents. The only difference would be in the 2½% commission and the price of tobacco would control that. I am looking at my statement for 1933. I can't tell from looking at that statement how much my total income would have been reduced if the statute had been in effect. The [fol. 440] only way I could do that would be to segregate the three items, that is, to do it accurately.

The 1933 crop brought a certain number of cents per pound, I think 1933 averaged about eleven cents. In order to accurately determine how much my income in any given year would have been affected by the operation of this new scale of charges, I would have to separate in that income the amount I received for commissions from the amounts I received from weighing and auction fees. That could be calculated out separately as I understand it, just like it was handled here without separating them where I have a statement for 1935. In other words, I have a statement here for 1935 which is accurate and which will give just what the profits were under the old charges, and what the profits would be under the new charges on tobacco sold this year. Now this year tobacco sold around twenty cents. I don't see where it is necessary to segregate them, because if tobacco sold for fifteen cents, the commissions would be smaller, and the difference would be in the 2½%. Of course you cannot figure it accurately without listing it and segregating it, but that is something that never was done in our record and the charges were taken off as a whole. It did not make any difference to me where the money came from, whether it was due to the weighing and auction fees or the 2½% commission. It don't make any difference to me if I lose the money whether it is due to the weighing and auction fees being cut down, or whether it is due to the 2½% commission. It is all the same to me. What I have lost according to the new charges is what I have lost, and is $4,296.98. With the old charges there would be that

much more. The total is what I am interested in. I have not caused to be figured, or figured myself, how much I would have lost for 1934, 1933, 1932, 1931 and 1930, or in any other one year if the statutory charges had been in [fol. 441] effect; I cannot figure it accurately. I have not figured it out. I don't know whether my records will disclose how much I would have lost in each year or not, because, as I said, the lower price tobacco is, the lower the charges are. In my own case I have not figured that. The lower the price, of course the less commission I get, and the more tonnage, the more weighing and auction fees I get. If the year runs a high tonnage and a low price, I would necessarily get less out of commissions and more out of the other fees. In order to determine how this statute affects me, I would have to find out the tonnage and the price. I wish we had that, because that would show a much bigger loss to me at the new charges over the old charges than it does this year. I haven't figured that for any year except for 1935; nobody figured it. The Compress Company owns the warehouse I rent in Tifton, and the stockholders are Mr. I. W. Myers, the Tift Estate and Mr. S. L. Fleetwood. They own practically all of it, and there is maybe a little scattered stock. I paid Mr. Fleetwood a salary; he went to work and solicited; he was one of the local solicitors. I paid him $900 as a local solicitor, and he signed all the checks and kind of helped look after the office in a general way. I don't know whether I could have duplicated his check services very much more reasonably than that or not. I paid him $900 for the work he did at the warehouse; he stayed down there. He looked after our interest during the off season, and what I mean by that is he took care of us in this A. A. A. proposition because when the law came up we had to have somebody down there go over the record and straighten out things for the farmers and things of that kind. Another thing we did last year was when they got up these marketing cards, I sent some of them down there to him and he sold them. The farmers had to have them, but [fol. 442] did not know much about getting them, and I took a special interest in it and my organization probably sold $5,000 or $6,000 worth of marketing cards. They were cards the farmers had to have in order to market their tobacco. In 1934, I paid J. A. Carrington $175.00; he was a local solicitor. He lived at Adel, no, I mean right down

below Tifton about fourteen miles, near Lenox. Martin Kirby, $175.00, is the same man. W. C. Kicklighter, same man, $175.00. I paid Martin $220 in 1935 and $175 in 1934. He didn't do the same work; he went to work earlier and there was a larger crop of tobacco. I think he got more tobacco into the market, and that's what I presumed when I raised his salary. J. N. Mitchell was not a local solicitor, he was a weight man. He has been with me practically ever since I have been in Fifton. M. H. Griffin was not a local solicitor, he was assistant auctioneer. P. L. Henderson was a local solicitor; I can't tell you where he lives. R. O. Quinn, Jr., lives in Tifton; he was weigh man and floor manager last year. E. L. Ring, $430.80, was not my Adel solicitor; he was at Hahira. That amount of $115 to E. L. Ring was for local soliciting. The original amount was $430.80. $500 was what I was paying him and paying his gas bill. That was for 1934, and in 1935 I paid him the same amount. I considered my business would be larger in 1935. J. P. Anderson is my auctioneer. Ruffin is the same man. On my 1933 statement I have an item here of hauling, $1976.01. That was for hauling tobacco; trucking it into my warehouse. It was an unnecessary and crazy thing to do, and I never wanted to do it but felt like I was forced into it. It was against my better judgment. That is an activity that all the warehousemen engaged in at the time to increase the tonnage for their particular warehouses. That was not only a help to the truckers, but also a help to the farmers, because a great many of the farmers got their tobacco hauled in free. Another farmer paid for [fol. 443] it, and that is why I am bitterly opposed to it; you do so much for one man and can't do it for all, and you find that you sell some of the farmer's tobacco for twenty-five cents and some for ten cents. In other words you have to sell it according to the market, and therefore the service rendered one farmer is more than it is for another. And that is one thing in my life that will go down as a dark spot with me. It ran away with me before I knew what happened or what was really happening. They were just smart enough and I was a fool, and they took advantage of it. You see a fellow would come in with his own tobacco and say I brought you 4000 pounds of tobacco and want my money for it at so much a hundred. I am paying those people who go out and use their influence in soliciting for

me, just like I paid those people to go out and haul the farmer's tobacco, but the farmers get the benefit of their services uniformly. If the farmers ask about his crop, we advise any of them. They are worth a great deal to the farmers in this respect. The farmers I hire as trade men go throughout their community and they know the people and are friendly with them, and they will try to help them if they want it. In hiring them I try to select them not only on account of their influence, but also because they are fellows of pretty good judgment and are pretty good judges of tobacco. After the market opens up, if they see a farmer they know and have solicited who has sold a pile of tobacco, and it did not bring enough according to the market, then they tell the farmer I will take it and pack it over and resell it, and they do it. In a great many instances they get more for their tobacco. A great many times a man will sell a lot of tobacco which is badly mixed up and one of these men will call a man from his neighborhood who owns that tobacco and will see that it is straightened out and pack it better [fol. 444] and put it on the floor, and I have known instances where maybe a man got $40 on one load of tobacco or one lot of tobacco more than he would have gotten if it hadn't been for that. So those men not only solicit tobacco for my warehouse, but they are there on the floor to take care of the farmer and I would have to have somebody else to do that if I didn't have him. I haven't got a man on there, except one or two that Mr. Wethersby hired and I don't know them, that I would not give a job to in the warehouse if I knew they were willing to do that work. I would not hire them to start with except for their influence; when I started with it, all I did was to go out and investigate those men in the neighborhood in which they lived to find out how they stood in their communities. Martin Kirby did not render the same service on the floor of my warehouse in 1934 that he did in 1935; he started to work two weeks earlier. He rendered the same work in 1933 that he did in 1934. His influence in getting tobacco to market had something to do with my paying him $125 in 1933 and $175 in 1934, but he was a better man. There is no rule or custom about what I should pay him. If I think a man is better, I raise his salary and I think a man ought to be promoted for that. He is just one of the best men I ever had. He is not better than Ring. Ring worked for me from the start

and went around to see the farmers about planting the beds. I looked on him as kind of a general representative in there and sent around $600 worth of tobacco seed to the farmers, and he would help look after that, and he was responsible for a good many people raising good crops of tobacco the year before. He didn't go to see all of the farmers, and all of the farmers he did see didn't bring their tobacco to my warehouse, I don't suppose, but a good many of them would not have except that he asked them.

[fol. 445] I was not showing a preference to certain of my customers at the expense of others when he could not see all of the farmers and they could not get the benefit of his services. He didn't see all of the farmers, and some of those he did see didn't bring their tobacco to my house. I paid $5 a pound for the seed I mentioned. I didn't give seed to all of the farmers. I offered them to all that wanted them until the seed was gone, but that was done without any charge, and I have been doing that since I have been in charge of a warehouse. That is not a necessary warehouse expense. If all of the warehousement set out to send seed, that charge could be eliminated. The $600 I sent to the farmers in seed might be worth anywhere from $2000 to $25,000 to the farmers that used them because they raised a better type of tobacco. If they had other seed they would not have asked me for mine and would not have exchanged them. It was just taking money out of my pocket and giving it to them to try to help them to make better tobacco, which of course helps me. That item of $565.67 for advertising was newspaper advertising; that was advertising of all kinds and part of it was for fans given away, novelties. My partner and I have not always practiced running a speculative leaf account in connection with our warehouse. That is not necessary in warehousing; I will explain what it is for as far as I am concerned. In running my sales, I am trying to get every dollar I can for the farmers' tobacco, and I prod the buyers. I mean simply this: just like you (Mr. Rivers) and Mr. Walker, Mr. Wilcox and Mr. Sibley were bidding on a pile of tobacco and it started at fifteen cents and it is bid on up pretty strong to eighteen and a half cents but my judgment is that it ought to go to twenty, and in order to bid it on up I will step on the auctioneer's toe or punch him in the side, and he will know I have bid [fol. 446] and will know that I presume that Mr. Wilcox and Mr. Sibley will come again. I get a better price that way

sometimes for the farmer and do not buy the tobacco, but at other times I have gone higher than the buyers will go, and buy it myself. If the buyer does not come again, the pile is knocked off to me. Those sweepings we have from the floor are net profit, but that does not come from the farmer. That comes from the buyer. It is a profit to the warehouseman wherever it comes from. It is a net profit we make for the warehouse. I suppose T. J. Jones got $150.00. I don't know where he lived. Mr. Wethersby hired some of those men. H. B. Peters was a local man; he was one of the same men I had all the time. McLin W. Saye was a local solicitor; he lived at Tifton, somewhere out in the country. I don't remember whether A. J. Sutton was a local solicitor or not. Some of those men there might have been in the office helping get the bills out or something of that kind. Some of these men, as I said, Mr. Wethersby hired, and several men worked every year down there I never knew. Sometimes I kept my leaf account, or my speculative account in which I buy and resell, together with my floor sweepings. At times I kept it in a special account. I do not think it should be called a speculative account. A speculative account is not necessary to the operation of a warehouse, but a leaf account is if you want the farmers to get higher prices. That item of $359.95 is leaf special. That was some tobacco that the tobacco companies tickets was lost off of and the companies reported it back short and I just put it out on the floor and sold it. I have those three accounts segregated, leaf account, special, $359.95, floor scrap $391.50, and another leaf $124.48. Sometimes we separated them and sometimes we ran them all together. It was a loss generally. Here's an item on the leaf account that shows I never tried to buy tobacco because it was [fol. 447] cheap. I did not. I always paid what I thought the market price ought to be for it. Sometimes I lost on my leaf account; I did this year. I lost on my leaf account in 1935 $1,975.97, and the floor scrapings were all included in that. I bought that tobacco at what I thought was the market price or should have been. I don't remember what I paid for it, but I paid anywhere from five cents a pound to thirty. The market on that particular grade did not go higher later in the season than what I bought it for, if it had I would have gotten out on it. If a fellow buys leaf and the grades which he purchased goes higher on the market

and he sells it, he will make a profit, but you can't hold back and wait on the market. You have got to sell it as soon as you can because tobacco deteriorates lying there in the house. It will deteriorate in three weeks; it will deteriorate in a week to some little extent, and that's why the companies rush their tobacco to points where they can preserve it. As to a man, a warehouse man, who still has on hand $7000 worth of tobacco which he has kept throughout the season, I would rather have taken my loss during the season than when he will sell it. I did not say tobacco could not be kept; it will deteriorate on him even if he shipped it to North Carolina. It will lose some and also lose color. I think he should have sold that in Georgia in his warehouse during the market. I never knew but one year in which you could ship it up here and make a profit. That was in 1919, when they averaged twelve or thirteen cents in Georgia and fifty cents in North Carolina. Now this leaf account here that shows profit or loss on leaf account—this tobacco, I never bought a pile of it because I thought it was cheap. I bought it to help push the buyers up, and what little success I have made as a warehouseman I attribute to the fact that I run what you would call a hard sale to try to bring the market price up according to [fol. 448] my judgment. I lost Fifteen Hundred Dollars this week on tobacco that I bought week before last trying to hold the market up. The average price of tobacco sold at my warehouse in Tifton last year was 19.74 cents a pound. Every other warehouse in Tifton had a better average price than I did. I did not say I kept the price way up by my bidding on tobacco. If you had 100 bales of strict middling cotton and I had 100 bales of low middling cotton, I might make a better sale on the low middling cotton in proportion to the one you made on the strict middling cotton; but at the same time I would not make as big an average on the low middling cotton as you would on the strict middling. So if you take a sale of tobacco through several warehouses one may *may* average $20.00 a hundred and another $23 or more, but that average does not necessarily mean that the man who got the best average sold the tobacco per pound and per grade as high or higher than the other man who averaged less than he did on all of the tobacco. That's the only way I can explain it. If the other three warehouses in Tifton averaged more than I did, they

probably handled better grades of tobacco than I handled. Here is an illustration of that. My sale in Rocky Mount last Tuesday averaged 18½ cents and on Wednesday I averaged 16½ cents, and the market was just as strong as it was on Tuesday and I sold tobacco just as high, grade for grade, as I did on Tuesday, but I averaged two cents less money because I had common tobacco. I heard the gentlemen who runs the warehouse at Douglas testify about this large carry-over of tobacco that he had bought. I don't remember whether it was the O. K. Warehouse or not. I remember he said he carried over seven thousand dollars and some odd dollars worth. If it was the O. K. Warehouse his average price this year was 18.32. The average price per pound sold for dealers was 17.13. The Soapers Warehouse there averaged 17.84 per pound. Pounds sold for [fol. 449] another or other warehouses, means what is sold for the farmers. That is first hand sales. That sold for others means speculative. It should be read pounds sold for the owners or others by the warehouse. It means for the farmers, and the others means speculators. It means owners or other warehouses. That statement for 1933 shows the profit made on my leaf account. That means that I made that much profit on my leaf account in 1933, and includes the sweepings. In 1934 my leaf account shows $701.17 profit. In 1935 it shows the loss I testified about. In 1931 my leaf account shows a profit and in 1933 it shows a profit. The profit in 1933 was $1,364. The profit in 1931 was $359. The profit in 1934 was $701.00. 1932 shows $500 for floor leaves, and joining them together, $562.47 profit. I did not say I always had a loss when the floor sweepings were combined with my speculative operations in buying and reselling to boost the market, but I said taking it over a period of years, the average would show a loss. In 1932, without counting the odd dollars, I had $500 profit; in 1934 $700; that was $1200 on those two years. In this year and 1931 I had a profit there, but that account, $359, part of it may be represented by lost piles and tickets, in other words, where the companies reported them short. Counting it all together that year with these other accounts, I might have had a loss of about $75.00. I had a profit here of $750. The $75 from the $750 would not leave $675; I was counting that in the $750. There was that profit there. The $700 in addition to the $1200 would be $1800. Then I had a profit

here of $1364. I don't think $1700 and $1300 are the figures I had. The two would be $3200. During five years' operation, which I have the records on, I had a profit of $3200 in that account, and a loss of $1975.97. I got a net profit in my leaf account during the five years' operation of over $1300. I was mistaken when I said that over a period of years the leaf account would average a loss. I was mis-
[fol. 450] taken there about that period. I still think I am right about it though, because I think this does not show in the leaf account—yes it does too. I said I was mistaken as to the fact that over a period of years I had a net loss rather than a net gain in my leaf account, but I don't know but that would show a loss over a longer period. I have all my records down here. If you ask me what the loss is or profit is in my account, I call tell you that matter exactly. You asked if the floor leaves would not about balance or off set the loss in the leaf account and I said I did not think so over a period of years. Of course the figures here speak for themselves. I was not trying to put over anything for the figures are right here to be verified.

[fol. 451] HOLTON B. WALLACE, sworn in behalf of Complaints, testified as follows:

Direct examination:

My name is Holton B. Wallace, and I reside at Moultrie, Georgia. My occupation is tobacco warehouseman. Since 1928 I have been in business myself, and have been connected with other houses for eighteen or twenty years prior to that time. I have operated a tobacco warehouse myself at Moultrie, Georgia and Smithfield, N. C., since 1928. During the 1935 season I operated two warehouses in Moultrie, the Peoples Warehouse and the Shepherd-Smith Warehouse. I operated as a partnership. My partner was L. R. Barber, of Moultrie, Ga., familiarly known as Leroy Barber, and a first cousin of Leo Barber. I operated two warehouses at Moutrie also in 1933. I had the Central House and Peoples House in 1933; the Shepherd-Smith was built this year. I operated the Peoples Warehouse continuously since it was built, in 1928. I am a plaintiff in this suit attacking the scale of charges passed by the Legisla-

ture. I have my books reflecting my operations for 1934 and 1935 with me. In 1933, in September, after the market closed, the Peoples Warehouse at Moultrie was totally destroyed by fire, and I lost practically all records in that fire. I also lost in that fire the records for the Central Warehouse; I only had the Central rented by the year or season, and kept all my records in the house I operated all the time. All the records I have in Court consist of all those not destroyed by that fire; those I was unable to produce. My total income from the Peoples Warehouse in 1935 was $12,604.47. The commissions were $10,480.25. I am not sure that part of this really constituted an income, but operating two houses as I was, and having a short tobacco account and going from one warehouse to another on the sales, we were not so particular about keeping all of [fol. 452] those items separately. This income shows lost tobacco taken from the lost tobacco account, which is generally a net loss every year, but here it shows a net income of $147.50. My dealings in leaf tobacco, including the floor sweepings, all leaves, were $1976.72. Those three items comprise the total income. I do not have the exact poundage of tobacco I sold at the Peoples Warehouse. We kept no record except in the Internal Revenue report and we send that off at the end of the season. This report of the Secretary of Agriculture would show it, but we don't always have that. This report shows that the first hand sales at Peoples Warehouse were 1,369,324 pounds. The total expense of every type charged up in 1935 against the income of the Peoples Warehouse was $10,004.47. I haven't charged as an expense the amount deposited with the Clerk at Macon as the difference between the scale of charges; I have no record of that in this balance from operations at all. I did deposit certain amounts in Macon. The difference I deposited with the Clerk, or commissioner designated by order of Court, as shown on our ledger, is $2,649.32. Our total expense consisted of the following items: First, the lost leaf account, $411.86, suspense account $205.05; long and short tobacco, $678.20, interest and exchange, $736.85; United States Revenue tax, $52.33; errors and corrections, $98.48; common labor, $538.50; city tax, $50.00; insurance and bonds, $95.00; expense account which consists of just ordinary items, $725.30, and those items are itemized in the ledger; rent, $4,000; advertising $126.00, and salaries $2,282.17. That's the entire expense account

on the Peoples House. We had a net profit for the Peoples Warehouse for 1935 of $2,600 even. That profit is in addition to the amount deposited with the commissioner under the Court's order. That amounted to $2649.32. If this case is won and we are returned that Court deposit, our profit would amount to $5249.32. In the salary account there was $1275 set up for me, but I included that. I took that into [fol. 453] consideration, by which I mean I took $1275 out of expenses and included it with profits. We had an unusual partnership; my partner furnished the financial aid and knew nothing about the tobacco business or the operation of the warehouse. There is nothing left in those figures for either one of us. If the case now pending is won and the deposit returned to us, $5249.32 is the amount that would come to us in the form of net profit, but it would not be divided equally. I rent the warehouse. It is a building 150 feet by 300 feet. I just lease it one year at the time, but I have had it since it was built. The rental for 1935 was $4,000. That was a flat rental. In Moultrie and in the Georgia territory, as I understand it, that's about the rental you have to pay for a warehouse. In the North Carolina belts I get it a great deal cheaper. My rental contract entitles me to the occupancy of the building just for the tobacco season. I had office space given me for the storage of my safe and stuff like that the year round only, but the rest of the building has nothing to do with that, and I only get it for the season. Under the rental contract they are to vacate it five days before the tobacco market opens, and I am to return it to them after the tobacco season closes. The warehouse is used for other purposes outside of the tobacco season; a cotton man has been having a lease on it for the remaining eleven months of the year and it is used for the storage of cotton and the sale of fertilizer. It is used 12 months in the year. In the salary account for 1935 for the Peoples Warehouse, the items set up are actual salaries paid to the entire force. They include the auctioneer, bookkeeper, floor book man, scale man, clip man and other men used in the house on a salary and not an hourly basis. The auctioneer, book man, clip man, bookkeepers and all of our higher priced men are from North Carolina. That is necessary because you cannot get experi- [fol. 454] enced men in Georgia for those positions. The tobacco business is comparatively new down here and they have not started training them or local people for those

jobs. They require trained men. My auctioneer lives at Smithfield, N. C. My book man lives at Wilson, N. C., and my clip man at Wilson, N. C. In 1934 I ran the same warehouse at the same rental. In order to give the total income for 1934 for the Peoples Warehouse, it will take me five or ten minutes to get it together. I have the net income, and I can make up that statement in ten minutes, or something like that; I came down here hurriedly and did not have time to do it before. I may have it here on the profit and loss page; I have it right here. The total income for 1934 for the Peoples Warehouse was $14,098.85. That was derived from leaf account and leafs, $679.51, commissions $13,345.23, errors and corrections $41.99, and adjustments $32.12. That's the income. The scale of charges I used in 1934 were the regular Georgia Warehouse Association charges which the 1935 total consisted of, where it shows what we collected and what was deposited. The same charges were made in 1934 and in 1935 to the farmer. I don't know what poundage was handled in the Peoples Warehouse in 1934; I think it was a little over a million pounds. I drew badly in sales that year. (Counsel handed to the witness a report from the office of Commissioner of Agriculture.) From that report I find that we sold 1,281,764 pounds at the Peoples in 1934; that was first hand sales. The expenses charged against that income for 1934 was $11,307.61, resulting in a profit of $2791.24. I didn't have the same partner in 1934 that I had in 1935. I didn't have a partner; I operated as an individual. In 1934 I paid a fee of $750 for financial aid, and it does not show in this. That is not set up in my expenses; it was not set up when we closed and I did not know until we had closed about it, and the books were left in Moultrie. I paid it on December 1st. [fol. 455] If I charge that into my expenses for 1934, my net profit would be $2,041.24. That amount is all I received for my time, skill, services and experience in carrying on the warehouse business in 1934, from the operation of the Peoples Warehouse or the operation of any tobacco warehouse. I made other money in Georgia out of other interests, but none from the warehouse except this. As to the amount of cash capital required to carry on my business at this house in 1935, you know the bank permits you to overdraw. We gave collateral. My partner, Mr. Barber, is

pretty well blessed with that and he put up $40,000 and we were overdrawn at times as much as $40,000. In 1934 the amount used in the Peoples Warehouse would have been a little less. The man I paid $750 for financing me, put up $25,000 in collateral at the bank and stood good for the overdrafts. It was not necessary for me to keep up with it personally, but my books show it from day to day, but after they were closed they would not state that. We always had an overdraft due to the fact that we had to wait for the tobacco companies to pay up. In 1934 I recall distinctly that the amount was $25,000; it was necessary for the Peoples Warehouse alone; that's the only house I had in 1934. I have been devoting a great deal of time to my Georgia warehouse business. I have been doing some farming down there myself. I go down to Moultrie two weeks before Christmas and give away about $150 worth of tobacco seed and I spend at least 90 days doing practically nothing except riding the country and contacting growers and assisting growers. That is prior to the opening day; it is customary among tobacco warehousemen. Very few of them spend as much time as I do, because I am living there. During the actual season, I operate the sale at the warehouse, run the sale and sell the tobacco. My books for 1933 and years previous were destroyed. In 1933 I made $4,500 and some odd cents [fol. 456] from my operations in Georgia. I haven't any figures as to my income and expenses for that year; I just have my net profit as reported in my income. That was solely from my Peoples Warehouse operation. I had other warehouse operation in 1933; that was the year I had two, the Central and the Peoples Warehouses. In 1932 I took credit for $1818.40 as a loss on my income tax. That was the Peoples Warehouse operation. In 1931 I made a profit of $2,487.29; that was from the operation of the Peoples Warehouse. I didn't operate any other warehouse in Georgia that year. In 1930, I made $8,077.20 on the operation of the Peoples Warehouse. That was profit. That was the biggest year I ever had, and I sold 3,150,000 pounds, over three million. During all those years the same scale of charges in operating my warehouse was made; the same scale at all times. The second warehouse I operated in Moultrie in 1935 was the Sheppard-Smith Warehouse. In 1935 the income from that warehouse was $11,992.41. The items comprising that were commission account $10,721.60, the leaf and leaves account $938.48, and

lost tobacco, $332.33. The commissions were charged on the same scale we had been using in Georgia prior to 1935. I deposited $2574.57 from that warehouse with the Clerk of the Court, as required by the order. I leased that warehouse. It was the same size as the other, 150 by 300 feet. I leased it on a profit sharing basis. The building was only completed about two weeks before the market opened and they did not anticipate using it for tobacco this past year, but I worked out a trade with them for me to furnish the experience and the management, and they furnish the building and then we split 50-50. The owners of the building were my partners in the operation of that warehouse to some extent. Just as to net profit. They were really not partners, for I was running the business and they were interested only in what I made. They took no part in the operation and [fol. 457] did not assist in the operation except by furnishing the house and you might say they rented it on that basis. The poundage sold to that warehouse in 1935 was 1,364,472 pounds first hand. The expenses charged against the operation of that house were $8,899.15, and the net profit was $5,360.93. That does not include the amount deposited with the Clerk at Macon. If we win this case, my net profit will be that amount, plus $2574.57, making $7935.50. One-half of that amount would go to the owners of the warehouse as rent, and would amount to $3967.75. Deducting that, my net profit would be $3967.75. That figure would represent not only the only payment to me for operating that warehouse for my time, skill and experience, but my partner is supposed to come in there. I would not receive that much net individually. No expenses have been charged representing a payment to me for my time, skill and experience in operating the business. The $3967.75 would be split equally between me and my partner in that transaction. L. R. Barber, Moultrie, Georgia, was my partner in that. He financed the warehouse, the greater portion. The cash capital required to finance that operation was about the same thing as the other. I don't recall at the moment just what amount the note was for this house at the bank. Mr. Barber put up a good bit of collateral, and it was about the same thing. I would not be surprised if it was actually $40,000. I ran the sale at the Sheppard-Smith Warehouse. Very luckily in the draw I drew positions number two and number six, which never conflicted. I was able to go from one house to the other. It really worked this way. Number

two was the Sheppard, and we sold it, and we started there and finished Friday afternoon and started in the Peoples on Monday morning. From that time on when we finished the Peoples, then the sale was due to go into the Sheppard-Smith and we just went across the street to the other. That warehouse was located directly across the street from the [fol. 458] Peoples. We could fill one warehouse while we were selling at the other; that's just about the way it worked this time. I have no figures whatever on the operations of the Ceneral Warehouse in 1933, except that I have what I made that year on the two warehouses. I have already testified about that. I did not operate two warehouses except during the years 1933 and 1935. The facts with reference to the skilled help in the Sheppard-Smith Warehouse are the same as applied to the Peoples Warehouse. There was no combining of pay-rolls for the two warehouses; each tub stood on its own bottom. Each warehouse was operated as an independent unit so far as expense went. I have to pay that and had to do that because Sheppard-Smith, they were looking to the net profit for their rental.

Cross-examination.

When I made reference to the regular Warehouse Association charges awhile ago, I meant the scale that the Georgia Warehouse Association charged. The Georgia Warehouse Association is comprised of its members, those who are operating tobacco warehouses in Georgia; all of them so far as I know. I think, if my memory serves me right, in 1926 they found it necessary to go out of business or in order to operate at a profit—I cannot say that by concerted action they met and fixed the fees, because I was not a member of the association at that time. I was not in the tobacco business in Georgia at that time; I was in North Carolina at that time. I came to Georgia later, in 1928. The information I received with reference to what had happened about fixing the regular charges that were to be observed by all of the warehousemen in the territory in Georgia was purely hearsay. I just heard they had to raise the value of their services a little bit in order to make it justifiable to leave their business at home and come down and operate warehouses. I really can't say who I heard [fol. 459] that from. Possibly from some of the warehousemen, I can't tell though. I don't reckon they were the only ones who knew it; I reckon the farmers knew different. So

far as what happened in the association, I would think the warehousemen were the ones who knew about that, but I was not here. I attended some meetings after I came, and joined the association. I attended every meeting afterwards, so far as I know. They would meet once a year. They didn't always meet at the same place. The first meeting I attended was held at Tifton. I think it was pretty generally attended by the warehousemen over the Georgia territory. I think the next meeting was held at Nashville, but I cannot swear about every year. I know the first, in 1928, was in Tifton. When I first attended the meetings, I was welcomed as a new member and was presented with a scale being charged in Georgia and was asked my intention about carrying out those charges. They didn't let me in as a member on condition that I agree to that; I did not have to do that, I guess. The reason they presented a scale of fees or charges to me at the same time they welcomed me was because they wanted me to know what they charged, I reckon. I think all the members of the association were required to abide by it. I went in, and immediately one of the members said, Here is a new member coming in, and they presented me with a scale of fees. They asked me if I would abide by it, and I told them I was willing to. I don't think I ever heard them discuss the matter that prior to that time, in 1926, the scale of fees had been raised or that the level had been raised; I heard that discussed in North Carolina, but not in Georgia. But I do recall having heard that and the reason advanced for it was that they were all about to go broke. I don't know how long they had been operating on the lower scale; I don't know anything whatever about that. I don't know how that got to be fixed. I began operating a warehouse in Georgia in 1928; the [fol. 460] Peoples Warehouse at Moultrie was the first warehouse I ever operated in the State of Georgia. I operated there in the years 1928 and 1929. 1928 was not a good year; 1929 was very good. That was not the best year I had; the best I ever had I referred to awhile ago. That was after we got two sets of buyers; that did not happen until 1930. Moultrie was a small market until 1930. I think it opened in 1925; that's what I heard, I was not there. It was considered a young market when I went there. The tobacco industry was rather encouraged there among the farmers and they increased their acreage and the market at Moultrie had a considerable increase in poundage

and sales, up to 1928. There was only one warehouse there when we built the Peoples. Four or five associates and myself built it. It was incorporated. In 1929 I operated in the Peoples Warehouse and that was the only one I operated, and again in 1930, and that was the only one. In 1931 and 1932 it was the only one I operated. In 1933 I took on the Central Warehouse; took it on after the 1932 loss. The crop was up and growing and I could tell pretty well what was there then. 1932 was a bad tobacco year; it was a very short crop and I had one-half interest the next year in 400 acres, and had to have space to take care of it. That was in 1933. In 1934 I operated just the one warehouse, the Peoples; in 1935 I took on one more, and operated two. In 1933 I was interested in the growth or production of tobacco to the extent of 400 acres. It was not all in Colquitt County; some was in Thomas and some in Mitchell County. It was in that immediate territory. The first year I engaged in the production of tobacco was in 1930. I have been engaged in the production of tobacco consistently until this year; none in 1935. In 1935 I have traded a little bit in automobiles, and first one thing and then another like that, and in one or two little land trades. I don't maintain a regular office or place of business. In 1935 I spent all the time in Moultrie except three weeks when I went to [fol. 461] North Carolina in March, until the season was opened. My home is in Moultrie. It has been my regular residence five years. When I go back to North Carolina, I feel that I am away from home. I am not a realtor; I am just a messer. Moultrie was my residence and I pay my taxes there. I commenced living there in 1930. Mr. Louis Friedlander owns the People's Warehouse. We sold it to him after it burned, and he rebuilt it. It was burned in 1933, and he rebuilt it. This year the rent I paid to Mr. Friedlander was $4,000. When the tobacco season is not on, this building is usually used for the storage of cotton. Mr. C. O. Smith has used it for that purpose this year, and it has got something in it now, I think, but I don't know what it is because Sheppard-Smith has built his own house. It is used four weeks for tobacco. That is $1,000 a week; right good rent. I think it is liberal rent. I have paid that every year since I operated there on a rental basis. That was in 1934 and 1935 to Mr. Friedlander. I paid that in 1933 to our corporation. Of course I recovered a little bit of that that year, due to the fact that I had stock in the cor-

poration. I am not a man of sufficient financial means to handle my situation down there; I was unable to put up $40,000 of $50,000 in cash at the bank, or in collateral. By reason of that fact it has been necessary for me to take in somebody else, somebody to carry the financial load. I took in Mr. Barber, Mr. L. R. Barber. In 1934 I paid $750 to get somebody to furnish credentials at the bank. That was in addition to the interest and exchange; the bank had nothing to do with the $750. I generally put up $10,000, all that I could. That was just up for the time I operated the business, provided I am lucky enough to get it down. It was in jeopardy for that length of time. The net amount I made out of my two businesses down there under the scale of charges fixed by the legislature, in 1935, was $3875.00; that was my part. My partner has made $1325.00 [fol. 462] out of bother places; that was for financing those and what it really amounts to. The condition under which I rented the Sheppard-Smith Warehouse was unusual, due to the fact that the warehouse had just been completed. Sheppard-Smith built it. At the last minute we made a trade with them on the basis that we would pay them a rental according to what we did. In other words we would not have assumed the great risk of opening a new house and agreed to pay $4000 rent for it, and we had to get a crew to work for it, and we could not afford to guarantee in rent any considerable amount of money. Therefore, they were to share in the net profits on the basis of 50%. Whatever net profit was made, they were to get 50%; that constituted the rent of the building. They actually got $2600; that excludes, of course, the amount that was put up at Macon. If that goes back, they get 50% of that, or half of it. That would be $1270 and something more, I think, and that would put them right at the $4,000 mark. There is not a house in Moultrie that can be rented on the basis of the tonnage of tobacco sold. I don't know that a number of them in Georgia are rented on a tonnage basis; none in Moultrie. I rent my house in North Carolina that way. There are six tobacco warehouses at Moultrie now. The season in 1930, when I sold three million pounds, was a little over three weeks. It was the longest season we have had since I have been going down there. As I recall it did not last quite four weeks, probably eighteen or nineteen selling days. It would have been impossible in the length of time for the 1935 season, to sell three million pounds of tobacco at each

of the six warehouses there with two sets of buyers; that is impossible in the length of time they were selling tobacco. They did not get to you that often, and even if you had filled your house as quick as you emptied it, they could not have. The fact that there are six warehouses to draw the tobacco and only two sets of buyers who have to go around [fol. 463] to each warehouse and sell that out, decreases their selling time. The warehouses are not always full when they are reached. In 1930 we had three warehouses in Moultrie and two sets of buyers, and we sold just as hard as we could and sold seven million, two hundred and fifty thousand pounds. We had two sets of buyers in three warehouses in 1930. We have 7,250,000 pounds gross for 1930 with two sets of buyers and three houses, and this year we sold gross 8,098,000 first hand sales, say almost nine million gross this year with six houses. I don't recall the 1930 figures exactly. It might have been possible to have sold nine million pounds under the circumstances and conditions then. It is not necessarily true that the number of sets of buyers on a market determines what can be sold there rather than the number of warehouses. The more warehouses you have and the more money to produce business—it has been proven over and over that that is what it takes to build a market. You could have six warehouses and if the six warehouses wouldn't spend a dime to get business, they would dry up. That has been proven as a matter of record on all the markets. You do have to do it. It takes investment, time and money to make tobacco bring money. The number of warehouses and the competition stimulates the warehouses and sends them out in the territory to get business and that really makes the warehousemen on the market feel like they have got to go out and get it. Some markets take tobacco away from its normal territory or market; we had some from the Pelham territory, a great deal. That is thirty-three miles from Moultrie. I sold tobacco beyond Adel that came through Adel, came from Lakeland or Nashville, or near Nashville. I sold tobacco from Jackson County, Florida, 135 or 140 miles from Moultrie. Most of that had been going to Valdosta. We sold tobacco that should have gone to Quincy, raised right in a stone's throw. I meant Live Oak instead of Quincy. I don't know how far Live Oak is from Moultrie exactly: I think it is 75 miles.

[fol. 464] I feel that by our activity we got tobacco that

normally would have gone to a closer market. Going out and getting business from other territories did not run up my expense of operation except my tarveling expenses, gas and oil. I did not have any solicitors in those territories; I had some solicitors but not in the territories I just mentioned. I had five solicitors; they were paid an average of about $300 each. That was for this year. There are four of those that have been with me since 1928, and one or two of them got considerably above $300, and the others did not. I didn't go around Live Oak and the other places I mentioned and show the farmers how to cure tobacco and grow it; I did not get that far away from home. I went to Live Oak two times and spent two days in that territory myself. I do instruct them in Colquitt County in growing and curing tobacco. I was born on the farm and raised in it, plowing and cultivating it. I have been growing tobacco since 1917, and I have loaned the growers money but I have not loaned any money to the growers since 1932. In fact, there were people that I caused to start growing tobacco in 1933 when I had the 400 acres. If there had been no activity on the part of the warehousemen, and nine million pounds of tobacco had just been brought into Moultrie this year, three warehouses could not have sold that just as easy as six warehouses; not in the number of days we sold it in, I don't think. The buyers go from one house to another, but where a market of the size of Moultrie was securing tobacco from as large a territory as that had only three warehouses, say for this year, nine million pounds could not have come in to Moultrie or in the warehouses, I mean three, in the number of days we sold tobacco and been unloaded in three warehouses, unless they covered acres and acres. The same size warehouse there now could not have done it, since thirty or forty per cent of the tobacco that came to town would have been unable to get in the warehouse and get unloaded. [fol. 465] I don't think the farmers would keep their tobacco at home until they knew they could get it on the floor of one of the warehouses if there were only three warehouses there. They would not. Just try to organize them; you cannot tell the farmer anything and when he is ready to sell tobacco, here he comes. All of my records back of 1934 were destroyed. I was keeping those records in the Peoples Warehouse in the iron safe. It is just outside on the street now; it proved to be not fire proof. They were burned up

in the safe. I don't own any property devoted to the warehouse business in Georgia except an automobile and a safe, and little items of that type. The automobile is used solely and exclusively in the warehouse business. I might snitch a little bit and use it for personal traveling, but I use it almost entirely in the business. I have two cars, and it is supposed to be used entirely for business. I don't use it on the warehouse floor or in the warehouse to sell tobacco. The safe cost me $300. I bought it in 1934, February last year. Everything else I use in the operation of a warehouse business is not owned or leased and goes in as an expense of operation; the baskets do not. The baskets are furnished by the house, and the buyers pay a rental on baskets and this rental is turned over to the man who owns the baskets. I don't own the baskets or the scales. I don't own the hand trucks in Georgia; I do in North Carolina. I don't own those in the operation of my business in Georgia. I have an adding machine, and a check writer, called a Protectograph. I think those machines cost me possibly $200, $87.50 for the check register, and I think the adding machine was $112.50. I keep other records in the safe besides my tobacco records; anything I want to leave at Moultrie, I put it in that safe. If I had to close up my shop and quit operating because of having to use these lower charges in Georgia, I would be placed in the position of anyone else who had spent [fol. 466] money and who had spent a great deal of time, money and trouble and education in something that had developed into a real value, and then have it taken away. I could not use my talents in Georgia. That would be my total loss. I am not positive what the weighing and handling fee were that the Georgia Tobacco Warehouse Association told me were in effect when I went into that association, or the auction fee and the commission. I am sure if they were called out, I would recognize them. I do not have to do the figuring of those charges at all. The weighing and handling fee they told me was in effect was 25 cents per pound for all piles of one hundred pounds or less and 25 cents for each additional one hundred pounds. I think the caution fee they told me was in effect was 25 cents per pile for all piles under two hundred pounds and 50 cents per pile for all piles over two hundred or more, or two hundred pounds. They told me the commission in effect was 2 1/2%. The weighing charges the warehousemen used in North

Carolina is 10 cents per basket weighing less than 100 pounds, and at the rate of 10 cents per hundred pounds on any basket weighing 100 pounds or more. The auction fees in North Carolina are fifteen cents per basket on any basket up to and including 98 pounds, and 25 cents per basket on any basket above 98 pounds. The commission is two and one-half per cent. I am familiar with the rates fixed by the new Legislative Act in Georgia. They are the same as North Carolina except that one point where they evidently made a mistake. They would take advantage of the 100 pounds. I remember just one little discrepancy. I haven't seen a copy of the bill since June or July; it was practically the same as North Carolina. You cannot charge 25 cents on a basket that has a pile between 98 and 100 pounds on it; it goes up to an even hundred. I think they excepted the even hundred and North Carolina changed it between 98 and 100. In other words, it is 15 cents and for a hundred pounds 25 cents is charged. That *That* is a very slight [fol. 467] difference and only applies to those piles that weigh within the two pound range. Two and one-half per cent commission is a reasonable commission if your other charges are in proportion. In the State of Tennessee, they get four per cent commission. I am stating that from my own knowledge. I operated in Tennessee in 1933 and 1934. The charges there were fixed by a farmers and warehouse committee. The charges are 25 cents for a pile, which covers all handling fees, and 4% commission. The auction fees are included in the 25 cents. The main item in my charges is not the commission. In North Carolina it runs 50-50, but in Georgia it don't. Of course it varies according to the price being paid for tobacco. In a bad tobacco year, whether we would make any money at either the old charges or the new charges would depend of course upon the volume and our expenses. If you anticipated that year early enough to reduce expenses, we might be able to. In the years where we show large profits, such as 1930, it is not true that the profits are mainly due to large commissions and high priced tobacco. 1930 was a low price year and depended entirely on volume. In that year there were three warehouses in Moultrie, and now there are six. I go to North Carolina at the close of the Georgia season. This year I went to North Carolina the 24th day of August. I got there two days before we opened and we opened on the 26th. I have been

there ever since. We are through there now; our markets closed there two weeks ago. I have been operating in North Carolina since 1928; I have been operating in Georgia and North Carolina since 1928. I came from North Carolina down here. The business there is already closed up. I am going back to spend Christmas with Mother; I will then go back to Georgia soon. I hope to go back in time to take part in the Primary. I have averaged spending eight months per year in Georgia since 1928, and three months in North Carolina and six weeks in Kentucky. It is right around [fol. 468] eight months that I am in Georgia. Three years I did not go to Kentucky and spent nine months per year in Georgia. I can explain why the weighing and handling charge is 150% higher in Georgia than it is in North Carolina; it takes more to handle tobacco in Georgia than it does in North Carolina. The main difference in the strictly labor handling charge in Georgia is the fact that the warehouse has to furnish all the labor. Our farmers in North Carolina who grow tobacco grade it very closely and make eight or ten grades where the Georgia farmer will make possibly three. They nurse their tobacco, so to speak, and won't let anyone else touch it. They come to the warehouse and do your work for you and pack it out on the basket nicely so it can be put on the floor. They come in anywhere from four o'clock in the morning to ten o'clock in the morning, and there is only about a six hour rush. I am speaking of my own operations. That's all I know anything about, but that is also my observation and I have worked on no other markets in North Carolina except Smithfield. It is much simpler to get one thousand pounds of tobacco on the floor in Georgia than in North Carolina, but in Georgia you are forced to keep open twenty-four hours a day to receive tobacco. The farmers down here, a big per cent of them, will not haul tobacco during the day. Of course some of them will and there will always be enough who will do it to keep a small crew. What I mean to say is, they will not haul tobacco during a boiling hot sun, but of course there is always enough of them that will do it to keep a small crew busy. I heard up there in North Carolina that the warehousemen in Georgia raised the charges in 1926 or 1927 sometime around those years, because they felt unless they did do it they would have to go out of business; that is the gist of what I heard. I did not know that they had been in business

with those low charges for ten years prior to 1927; I was not familiar with the Georgia situation until 1927; I came down in 1927 to look the situation over. I did not know [fol. 469] then that they had sold tobacco for ten years in Georgia before that charging weighing and handling fees of 10 cents just like they do in North Carolina, but I can easily account for why there came a different charge about that time. Georgia started off and raised only a small acreage each year, and then they put the tobacco on the floor just like we did in North Carolina in small parcels. I was here in 1927. I was not here in 1926 and years prior to that. I am basing my testimony as to how they sold tobacco in 1926 from the facts I learned from talking with the farmers, and the knowledge I gained by actual presence and seeing them gradually increase their acreage on up until 1931, when they had two consecutive bad years and then started reducing. In North Carolina we get practically the same weighing and auction fees for selling tobacco that we do in Georgia on the present scale in Georgia, for say one thousand pounds, due to the fact that when a man brings in one thousand pounds in North Carolina his average weight per basket is about one hundred pounds and that gives you ten baskets and charges of $1.00. On the same one thousand pounds on the Georgia market, the farmer will make 3, 4 or 5 piles and there will be, if you figure it out, very little difference in the charges. It is not exactly right that you are using space for ten piles in our warehouse in North Carolina whereas in Georgia we are only using space for three piles. We have plenty of time and plenty of space in North Carolina, say four months. My expense in North Carolina in selling four million pounds of tobacco does not exceed my expenses at Moultrie for three weeks, selling three million pounds. I sold a little over four million in North Carolina and a little over three million in Georgia.

[fol. 470] Redirect examination:

I was born in Smithfield, N. C. My experience was gained from one year in Smithfield and fourteen in Wilson. I went to Moultrie, in the warehouse business, in 1928. I did not transfer my legal residence there until 1930. I cannot rent a warehouse in Moultrie cheaper than the rent I paid for the warehouses I testified about; I have tried and I cannot. $4000 is the cheapest I have been able to rent a warehouse

in Moultrie, except the Central Warehouse in 1933, which is a very small one, and I rented it at $1750, but it does not hold but about one-third of what the Peoples holds. The cost of building the Peoples Warehouse, in 1928 when I was connected with that, was $37,000. It was of brick construction; a brick warehouse. I don't know what the Sheppard-Smith Warehouse cost to build this year. I have worked out a typical case of so many pounds of tobacco selling at such and such a price and have figured the difference in the charges under the legislative scale and the scale we actually charged the farmer in Georgia in 1935 and previous years. I have arranged this bill, which is an average bill: 1088 pounds at an average price of 21.19 cents will draw a gross price of $230.63, an average price of 21.19 cents; warehouse weighing fee under the present scale would be $2.72, under the proposed law $1.09; auction fees under the present scale would be $1.75 and under the proposed law $1.25; commission of two and one-half per cent, being the same under both would be $5.76; total charges under the present scale $10.23; and under the proposed law $8.10. Taking one hundred pounds at 10 cents, one hundred pounds at 15 cents, and 100 pounds at 20 cents, and 100 pounds at 25 cents, and 100 pounds at 30 cents—the average price for the last three years or four has not been up to thirty cents or even twenty-five, but there will be lots of baskets that bring [fol. 471] forty cents a pound when the average is only twenty cents—there would be fifty cents charges on weighing and auction fees regardless on both scales, and the 2½% on $10.00 would be 25 cents and on $15, 37 cents, $20 it is 50 cents, and $25, 62 cents; and on $30 it is 75 cents. Where the piles are the same weight, the warehouse charges exclusive of the commission is the same on that kind of pile regardless of whether it brings four cents a pound or forty four cents a pound. It is not true that a typical sale by piles would not be of piles of the same or average weight but the piles as to pounds would vary according to the grades the particular grower was offering. My contention is that that is our best claim why we are entitled to more fees in Georgia than in North Carolina. In North Carolina if a grower sold this 1088 pounds, it would be at least ten baskets and on our smaller charge for weighing and auction fees, it will almost equal the charge here in Georgia. There is certainly not over five per cent difference and I have worked out all of them. There is really less than five per

cent. You can find that out if you will take the time. The 1088 pounds in North Carolina will number about ten baskets and at 10 cents there, why we get 25 cents in Georgia. The 10 cents will make a dollar there and in Georgia this 1088 pounds will probably be three baskets. Lots of times in North Carolina we will have baskets of ten, twelve and fourteen pounds weigh less than 100 pounds, which will be fine tobacco, such as wrappers. It will average out about $1.00 approximately or weighing it. I have made a careul study of the comparative results of charges in Georgia and in North Carolina. There is less than ten per cent difference if you take an average between Smithfield, N. C. and Moultrie, Ga., due to the fact that the average farmer selling one thousand pounds of tobacco in North Carolina will make at least eight to ten grades and each small grade goes in a different basket for each one. The closer tobacco is [fol. 472] graded, the better change they have for a larger price. It increases the price. The companies buying the tobacco have to grade it unless it is graded close and if it is graded closely, they do not. In North Carolina the farmers are experienced and know how to grade it even in the fancy grades. In Georgia where the farmers have not had the experience and won't take the time to grade tobacco that closely, they sometimes sell tobacco of a 15, 25 and 30 cent quality all in the same sheet. They bring it in in large sheets because cotton sheets are scarce, I guess. When you put three or more grades of tobacco together, they would buy it at an average price for the lot that would reflect to this extent against the growers, that he could never sell tobacco offered for sale in that condition at the best price. And also he would have no chance to sell it at the fancier grades. Practically all the tobacco grown in Georgia is shipped out of the State. I would say about 40% for export, and the remaining 60% of the Georgia belt is shipped to North Carolina or Virginia to be manufactured. There was a small cigarette plant at Hahira, Georgia; I don't know whether they obtained their raw products in Georgia or not. They did not maintain any buyers on our market, but I understand that is no longer operated. Probably some of the 60% that is domestically consumed would go to Louisville, Ky., to the Axton-Fisher Company. They have a buyer in Georgia. Then the Export Tobacco Company which is primarily an export company, have an American subsidiary, Brown and Wilson, of Louisville, Ky. They

no doubt ship some of their purchase to Louisville. With the exception of the Hahira plant I mentioned, and which I understand is out of business, there is no tobacco consumed in Georgia manufacturing which is bought on the warehouse floors of Georgia; none in Georgia that I know of. The production in Georgia has not been uniform in any of the [fol. 473] years I have operated here; not in the amount grown. Of course, due to the disease, it was greatly curtailed in 1932 due to a blue mold which destroyed plants. We had our heaviest production in Georgia in 1930. The Government curtailed the acreage in some of those years, to approximately 30% in 1934, and this year they gave them an increased amount. I am not familiar with their figures. They figured it off a base and I never learned how they figured it but from the amount lost on the market, we figured a 30% reduction in 1934, and this year it might have been as large as 30 in acreage because it came back some. The price has not been uniform each year. I can give the average price each year. The average price for 1928 was about 13 cents; in 1929 it was approximately twenty cents; in 1930 it was roughly around eleven cents; I think in 1931 about right or nine cents; in 1932 around twelve or thirteen cents; 1933 about the same; 1934 it was about eighteen; and 1935 it was a little bit better this year. In my opinion, in our immediate territory, they had an exceptional yield per acre this year. I testified on cross examination that I had no property in Georgia other than a safe and office equipment used in the tobacco warehouse business. I use in my tobacco operations cash capital at the beginning of the season. In 1935, I put up $5000 in bonds in the business, with the partner of mine who was really financing the business. That was for the two warehouses. In 1934, I had $7500 of my personal funds up. Every item of expense of my warehouse operations I explained is itemized in my book, and I considered it a very necessary expense at the time I incurred it, and they were paid. There was no padding of my expense account. From my experience as a warehousemen in Georgia and North Carolina, and from my knowledge gained from that experience, I will say that in [fol. 474] marketing a million pounds of tobacco in Georgia, there would be considerably less piles than there would be in marketing a million pounds in North Carolina. The average pile of tobacco in Georgia as compared with the average pile I handled in North Carolina is fully an average of one

hundred pounds heavier in Georgia. Our piles in North Carolina average under one hundred pounds, and piles in Georgia average closer to two hundred pounds, in my opinion.

Recross-examination:

Every pile in North Carolina or Georgia either, regardless of its weight, has to be placed on a truck; carried to the scales, weighed and trucked out on the floor; and each pile, regardless of weight, takes up the same amount of floor space; and each pile, regardless of weight, has to be separately auctioned off to the buyers. I put up that capital at the beginning of the season, in what I term jeopardy. If I come out, I get it down immediately. The man that finances me, if I take any loss, he is safeguarded up to that point. It generally takes thirty days after the season to get everything on the books and the books closed so that I can get that money down. After that my money is not invested in the warehouse business in Georgia, and I can use it for anything I want to. I usually do carry it to North Carolina and use it in my business there; sometimes I do not carry it when I go because I can't get it down by that time. If I am dependent upon the warehouse business in Georgia, I am afraid that capital would be eaten up entirely if I had to operate on the rates fixed by that law. It is not like a railroad company, that has to keep a large fund in hand as cash year in and year out for operating expenses, but it is absolutely necessary if I engage in this business that I do have some capital. I can draw it out without losing any of it when I make money, but I cannot be sure that I can operate without losing capital. I did in Georgia except in [fol. 475] 1932, and then I lost some of my capital operating in Georgia. I am in a partnership in one warehouse that I operated in 1935; I operated a partnership with L. R. Barber, Moultrie, Georgia. I operated two warehouses under the partnership. 1935 is the first year I operated that way. Every year since I came to Georgia I operated and the figures are all in the evidence, and all of it was on my books except for 1934, and that was the expense of financing, $750, and I included that in my testimony. I had nothing left of my records before the fire, and I could not show anything except figures I kept on myself, on my tax return. As I

said, 1934 I paid $750 as a charge for financing and put up $7500 personally. In the years 1934, 1933, 1932, 1931, 1930, 1929 and 1928, I operated individually. Those are all the years I operated in Georgia. During those years I did not own any baskets or scales; I always leased on the same basis, the house completely furnished. My partnership with Mr. Barber is a season by season arrangement. The only time I went down there and operated with him was in 1935. I have a tentative trade with him for next year; we talked it over yesterday. I can enter into that if I choose, or I cannot. If I can find somebody that will put up $40,000 cheaper than he will, I might make another trade. Production and prices are pretty uniform in North Carolina, except that occasionally they will have a low price year. Since the Government took charge of it, of course, they have limited the acreage and production both in North Carolina. Where they have been raising it for forty or fifty years, there were no new people left to spur the production one year and drop out the next, as the case is in Georgia or was the first few years I was here. They don't make all they could in Georgia; among the growers in Colquitt County today there is not more than 60% of the farmers raising tobacco. I don't know about the territory other than Colquitt, Mitchell [fol. 476] and Thomas Counties. The seasons control the yield per acre, but the amount of production largely depends on the number of acres. The seasons have something to do with it; they control the yield per acre. They have changes in seasons in North Carolina like they do in Georgia, some bad seasons and some good. Prices fluctuate there like they do in Georgia. I don't know how much longer the Government will interpose its offices to control the acreage; in my opinion it has been a very satisfactory condition to the farmers and it will be continued as long as the farmer has anything to say about it. That is due to the curtailment in production, I think, trying to get the supply in line with the demand. Where the supply is curtailed and prices are larger and profits increased, my commission income might stretch just a little bit, but if volume was cut down to a certain point at the same time it would be a loss. As prices go up, it off-sets to a certain point lack of volume to the warehouseman. The percentage part or commission part of a warehouseman's charge is the main part of his income when tobacco is averaging as much as eighteen cents or

twenty cents a pound. It is a very small part when tobacco is averaging ten, twelve or thirteen cents.

[fol. 477] STATEMENT AS TO TESTIMONY OF THE FOLLOWING WITNESSES

(1) W. W. Bernard, (2) J. B. Fenner, (3) W. B. Clark, (4) J. P. Bunn, (5) S. A. McConkey, (6) L. C. Pruitt, (7) Paul Morgan, (8) W. L. Leath, (9) Leon Oettinger, (10) Park Bernard, (11) John C. Meadows, (12) W. F. Boggan, (13) J. H. McLean, (14) H. Stanley Blake, (15) H. W. Winstead, (16) W. M. Talley, (17) H. J. Hurdle, (18) R. A. Hughes, (19) John S. Bernard, (20) A. W. Jeffreys, (21) Eugene E. Bullock, (22) R. M. Sanford, (23) W. C. Spence, (24) H. P. Foxhall, (25) C. K. Smith, (26) W. P. Moore, (27) P. H. Cannon, (28) Lee Edward Knott, (29) H. A. Easley, (30) J. S. Turner, (31) E. Y. Wimbish, (32) J. E. O'Hara, [fol. 478] (33) E. L. Moore, (34) J. D. Rogers, (35) R. E. Sheppard, all testified to the general facts brought out by the preceding witnesses in the foregoing narrative. The testimony of these thirty-five witnesses is merely corroborative and cumulative of these general facts and for this reason has been largely omitted, except as each of the witnesses testified to his individual operations. With this explanation the narrative continues.

W. W. BERNARD testified as follows (R. pp.368-410):

I have been identified with the tobacco business as a warehouseman 32 years. Originally I lived in Danville, Virginia, but now I live in Greenville, Tennessee. I have operated warehouses in Danville, Virginia, Knoxville, Tennessee, Abington, Virginia, and I now operate at Greenville, Tennessee, and at Douglas, Georgia, and Vidalia, Georgia.

My operations at Vidalia, Georgia, in 1930, resulted in a slight profit; for 1931 we sustained a loss.

Our books for 1930 and 1931 were destroyed in a fire. I have the books for the 1932, 1933, 1934 and 1935 operations. I am interested in a warehouse at Douglas which is operated by a partnership composed of my brother, Mr. Vann and myself. My brother runs the business there. I personally

engage in business at Vidalia where we have a corporation which runs the business. Mr. Vann and I are officers of the corporation.

Combined operations in Georgia at Douglas and Vidalia had a small profit in 1930 and a loss in 1931. In 1931 got in lot of trouble and had lot of tobacco on my hands and couldn't sell it. Corporation had $17,000 or $18,000 advanced to growers and only got back 10% or 15% of it. For 1932 we sustained a heavy loss, $10,110.94; for 1933 a loss of $3741.18; for 1934 a loss of $2459.09; for 1935 a profit of $1654.04.

[fol. 479] From 1930 through 1935 charges for services in Georgia tobacco belt were uniform, except in 1931. That was a bad year and you could hardly sell tobacco; and frequently when people came in with their tobacco to be sold we shaved the commission. We did not promise anything. Just out of sympathy we would deduct part of it. We didn't do that all the way along—there were instances, where the tobacco brought so little we were ashamed to charge our regular charges.

[fol. 480] The uniformity charged by warehousemen is due to a custom among warehousemen*t*. The charge fixed by common understanding and general custom. As to why the charges are so stabilized and fixed and uniformly observed, warehouse business is a reputable business and has got to be conducted on a high plane and there is a general customary charge throughout every belt that the warehousemen hold to and respect. If warehousemen were not to charge uniform rates it would demoralize the business. There would be confusion to the grower and demoralization to the trade in general. And during the years I have operated in Georgia the charges have been based upon uniform rates charged by the tobacco warehousemen except for the slight variation in 1931 referred to. We have absolutely no complaints as to charges from the growers.

Borrowed working capital varies from $60,000 to $80,000 per year. In 1935 we used $80,000. Interest is 8% and $2.50 per thousand bank exchange. In 1935 we reduced interest to 6% and $1.25 a thousand for exchange.

Cross-examination:

In 1935 the expenses at Vidalia, Georgia, were:

Interest on Investment of $42,868.75	$ 3,429.50
Depreciation 5%	2,143.43
Salaries of Officers—W. W. Bernard & J. C. Vann	3,000.00
Salaries of skilled help	3,051.00
Common labor	1,231.15
General expenses, lights, water, printing, advertising (Bad debts $1164.95)	5,959.32
Taxes, Interest, Insurance	2,625.74
Total	$22,240.14
The commissions and charges plus profit on leaf account	28,198.00
Profit	5,957.86
Of which the amount deposited in the Registry of the Court is	4,304.82
For 1932 at Vidalia the commissions were	2,079.26
Total Expenses	12,120.20
Loss	10,110.94

on sales of 309,504 pounds of tobacco at average price of $7.89 per hundred.

[fol. 481] Expenses Itemized in Vidalia Corporation:

Interest on Investment of $50,000	$ 4,000.00
Depreciation (on cost in 1927—$58,000)	2,500.00
Officers salaries	3,000.00
Salaries of skilled labor	1,003.63
Common labor	210.00
General Expenses, lights, water, printing	330.00
Taxes, interest and exchange	1,146.37

In 1933 at Vidalia we sold 1,685,968 pounds of tobacco at average price of $9.99 per hundred.

Commissions were		$12,593.20
Expenses were:		
Interest on investment of $47,500	$3800.00	
Depreciation at 5%	2375.00	
Officers' salaries	3000.00	
Salaries of 12 skilled men	3519.73	
Common labor	704.45	
Taxes and insurance	546.34	
Interest and exchange	813.06	
Miscellaneous expense	575.88	
		16,344.36
Net Loss		3,741.18

In 1934 the corporation at Vidalia sold 1,348,832 pounds of tobacco at average price of $16.32 per hundred—Operating capital, borrowed money $51,770.00.

Commissions were	$12,884.99
Expenses were:	
Interest on investment of $45,125.00	3,610.00
Depreciation 5%	2,256.25
Officers Salaries	3,000.00
Salaries of 12 skilled employees	3,008.85
Common labor	563.60
Taxes and insurance	1,038.00
Interest and exchange	963.33
Miscellaneous expense, lights, water, printing	941.67
Total	15,344.08
Net loss	2,459.09

In Tennessee the tobacco is moved out as it is sold, hauled to pack houses of the buyers; but in Georgia, they take it out to the box cars; then the cars are placed, they are usually right outside of the warehouse on the warehouse side track.

As to the purpose of the Georgia Tobacco Warehouse Association, it is banded together to protect us against any imposition from the buyers and companies and anybody [fol. 482] that attempts to interfere with our general good and making a livelihood. It is for uniform action and practice. In Georgia warehousemen adopted a voluntary code

of fair practice to eliminate employment of trucks by operators and prohibited warehousement to go out and get tobacco as an additional help in the solicitation of business. The code eliminated that practice in part. It was supposed to.

Until this year the corporation at Vidalia did business with a bank that required us to borrow money for forty days and would not take it back before that time and required the payment of 8% interest and they also charged ¼ of 1%—$2.50 per thousand dollars—as exchange or service. We resented that and this season borrowed some money and paid it back when we got ready and also got our pay off charge reduced to ⅛ of 1%, and by reducing the exchange rate saved $600 or $700. Prior to 1930 prices were high and we did fairly well. We made money. We thought we were making pretty good money. At Vidalia my brother, the two Vann brothers and I own the corporation and the warehouse and at Douglas, we four constitute the partnership. In the statement of expenses the depreciation item represents the depreciation on equipment and buildings, $2143.43, being 5%, and the $1164.95 shown in the statement classed as bad debts represents a loss on advances made to the farmers to help them market their crops. We thought that was good business but it proved it was bad. The building at Vidalia is constructed of sheet iron and wood construction. In 1927 it cost $58,000 but I would like to sell it for something like half of that now. The officers' salaries shown in the 1932 statement as expenses were paid to Mr. Vann and myself, being the same two who got the salaries in 1935. The item of $1146.47 was mostly for taxes. As to where we got the money to pay the $3000 salaries and $4000 interest on investment I suppose that was just a credit placed there. The officers' salaries of $3000 shown in expenses of 1933 was paid to Mr. Vann and myself.

Redirect:

We own two warehouses at Vidalia, one measures approxi-
[fol. 483] mately 100 by 400 feet and the other 150 by 270 feet. The fair rental of both per year is in excess of the total of the amounts testified to as interest on investment and depreciation for each year.

JULIAN B. FENNER testified:

I live at Tarboro, North Carolina, and have been working in tobacco for 10 or 12 years, but actually in the warehouse business for only 5 or 6 years. I operated as a member of a partnership in Georgia in Moultrie—the Farmers Warehouse—my partners being W. E. Fenner and R. R. Meador, in 1935. I worked in North Carolina for W. E. Fenner in a warehouse. In Georgia I am general sales manager and have operated at Moultrie only two years—1934 and 1935. From 1931 to 1933 we operated at Baxley, Georgia, and in 1930 I worked for a warehouse at Camilla, Georgia. My records are for the years 1931 and 1935, inclusive, only. We had a profit in each of these years as follows:

1931	$1,695.10 divided between three partners
1932	362.74 divided between three partners
1933	2,818.00 divided between three partners
1934	6,588.18 divided between three partners
1935 estimated—	4,346.62 with an additional amount of 3,324.52 deposited in the registry of the court.

My warehouse at Moultrie is one of the largest in Georgia, 64,000 square feet. It is rented on a flat, straight rental.

1931 My rental was	$2,250.00
1932 on basis of $1.50 per thousand pounds	233.02
1933 same basis	1,133.03
1934 a flat rental of	5,000.00
1935 a flat rental of	5,055.90

The borrowed capital foe each of the years 1934 and 1935 was $30,000.

My operations for 1930 through 1935 were at a profit. We paid $5000 as rent for a warehouse in Moulfrie, Ga. for three or four week-, while the same house would rent for about $1000 for the next 11 months, which makes a return of $6000 on a $30,000 investment to owner.

[fol. 484] Cross-examination:

For 1935 the gross commissions received were		$21,214.74
The expenses were:		
Taxes	$50.00	
Bank exchange and interest	1217.95	
Errors and corrections	168.27	
Salaries skilled labor	3621.34	
Rent	5055.00	
Common labor	1279.86	
General expense—advertising, gas & oil, stationery, insurance, etc.	2151.18	
Total		13,543.60
Net profits		7,671.14
of which the amount deposited in the Registry of the Court is		3,324.52
Leaving a profit under the statutory scale of		4,346.62

Since 1930 the Camilla market has been discontinued. Two houses were there in 1930. Moultrie is one the largest markets in Georgia. Two of the partners went down to Baxley to engage in the business there, Mr. Clarke and myself. In 1931, we paid our auctioneer $500. In 1932 the crop was a very small one. In 1935, I do not know what tonnage floor sweepings amounted to; I should not say more than ten or twelve thousand pounds of tobacco, which I should say sold at five or six cents per pound. The proceeds went into a leaf account and that account in my statement shows a profit of $24.06. The item of $168.27 shown in the statement of 1935 as an expense item represents tobacco lost or stolen out of the warehouse. A large majority of the warehousemen who do business in Georgia are interested in the warehouse business in North Carolina in some way. In Georgia my market closed on Thursday and the North Carolina market opened the following Monday. Last year 1934 my market ran one week into the North Carolina market but that's the first year I have know- that to happen. The motivating cause of the hurry in connection with the Georgia market is the tobacco buying companies. They have buyers which they use in Georgia and in North Carolina.

In 1935 I paid my auctioneer at Moultrie $600. In this item of $2151.18 shown as general expense on my statement is

[fol. 485] included the purchase price of baskets, which will be used six or seven years, also $199.55 for gas and oil for riding the country for about two months for two automobiles and about six weeks for three more automobiles.

As to the education work among growers, that is done in connection with soliciting business. I do not use the cars for the sole purpose of educating the farmers. It was done in accordance with the practice of our trade of seeing our friends, making new friends and soliciting business.

The house in which I operate at Moultrie was built in 1932. I think the amount I pay as rent for it is excessive. I happen to know the investment in that house, and the owners are getting around 18 to 20% on their investment per year. It looks like to me it is too much.

W. B. Clark testified:

I live at Wilson, North Carolina. I have been connected with the tobacco warehouse business as sales manager for 17 years, but only operated for myself during the last three years in Georgia and the last 2 years in North Carolina. I was a member of a partnership of two in 1933, operated individually in 1934, and as a partnership of 3 in 1935 at Baxley, Georgia, under the name of Clark's Warehouse. I rent my warehouse and in all these years paid rent on a basis of $1.50 per thousand pounds sold.

I have my books here. In 1933 there was some profit. In 1934 there was not any profit and in 1935 the amount deposited in the registray of the court represents our profit, which is $1966.63, in addition to $1090.37 shown on the books, less checks outstanding of approximately $658.00. In 1934, my commissions were only $3200 and the expenses charged up were $3500. My full loss was over $600. In 1933 I and one partner had a profit between $2700 and $2800. Each item of expense set up was a reasonable and proper charge. In 1935 we sold 1,132,000 pounds of tobacco. Under [fol. 486] the old charges it figures about $1.00 per hundred pounds under the statutory charges about 75 cents to 77 cents per hundred pounds. I operate a warehouse in Wilson, N. C. which I rent. The charges there figured about $1.10 per hundred pounds.

Rent at Baxley for a house of 41,000 square feet was $1524.13 in 1933, $454.00 in 1934 and $1698.00 in 1935.

The necessary borrowed capital is about $10,000 each year. My skilled help all comes from North Carolina and they demand higher pay per week or per season. Because of the short season and the distance to Georgia I have 15 or 16 skilled helpers. Common labor costs about 65 cents per thousand poinds sold. That is necessary to floor the tobacco. It costs more to sell tobacco in Georgia than in North Carolina.

[fol. 487] In 1930 I drew a salary of $250.00 per week for five weeks to run a sale for Mr. Fenner at Baxley, Georgia. I was sales manager that year.

Cross-examination:

I have been in or connected with the tobacco warehouse business since I was 15 years old. I am 46 years old now. For 22 years I have been in Wilson, N. C., and before that in South Carolina.

1930 was my first year in Georgia. That year I worked for Mr. Fenner. In 1931 and 1932 I was in partnership with Mr. Fenner at Baxley. He has testified to that. In 1933 I was with Mr. Anderson in partnership at Baxley. We did not draw any salary and our profit for both of us was right at $2900.00

Skilled employees' salaries were	1560.00
Common labor	432.08
Miscellaneous expense, stationery, taxes, sticks, baskets, advertising, gas oil, etc.	1524.23
Rent at $1.50 per thousand pounds	1373.43
Exchange	287.50
Tobacco seed	215.00
Interest	50.00
Board and traveling expense of partners	178.20
Salary to me	500.00
Loss on leaf account	603.71
H. W. Anderson, 40% of profit	1150.40
W. B. Clark, 60% of profit, less $500.00 salary	1226.60

I used the charges the rest of the warehousemen used in Georgia. I was not a member of the Association the first 3 years in Georgia. I do not know who fixed the charges. They are uniform in Georgia so far as I know.

We sell as much tobacco in Wilson, N. C., alone as the whole State of Georgia produces.

[fol. 488] My rent at Baxley for the years 1933, 1934 and 1935 was $1.50 per thousand pounds of tobacco sold. In 1934 we sold 339,000 pounds. In 1933 the profit was divided 60% to me and 40% to my partner and I paid myself a salary of $500 and that year we made a profit right at $2900. In 1934 the average price in North Carolina was about 26 cents per pound and in Georgia about 18.91 cents per pound. In 1935 so far the Georgia average is a little higher than the North Carolina. In 1933 my salaries paid were $1560.63, payroll $432.08 and miscellaneous expense item of $1524.13 includes stationery, tags, sticks, tickets, advertising, gasoline and stuff like that. In my opinion, the warehouse rent charges in Georgia are extravagant and unreasonable.

The item of $215 tobacco seed shown as an expense item was tobacco seed I gave away, seed that I brought to the farmers down there and made the farmers a present of it.

The interest item of $50 was interest on $10,000 I borrowed there. The item of $178.20 represents travel expense to and from North Carolina and board and lodging for myself and partner. The item of expense shown as loss on leaf account of $603.71 represents the loss on the tobaccco that I bought from time to time and resold and the floor sweepings were placed in that account. Since I have been in Georgia I have been charging the same amount for service as was charged this year.

Q. How did you happen to charge those charges in Georgia? How did they happen to be the same thing you are charging and have been for the last six years?

A. Well, according to instructions——

Q. Who instructed you?

A. Well, I did like the rest of them.

Q. Did the Tobacco Growers Association tell you to do that?

A. No, I would not say that. We figure the charges just like the rest of them.

Q. Are you a member of the Georgia Tobacco Warehouse Association?

A. Yes sir, I have been for two years. I was not for the first three years I was down there. I was not present when the charges were fixed by the Association. They [fol. 489] were fixed before I went to Georgia. I do not know who fixed them. So far as I know they have been

uniform throughout the tobacco belt in Georgia ever since I have been there. The tobacco Growers have nothing to do with the charges fixed so far as I know.

In 1934 and 1935 wages of common labor were fixed by a code not under $35 per week or over forty hours per week. This code fixing the wages applied to North Carolina as well as Georgia. The most I ever paid an auctioneer was $700 for four weeks. I don't go down in advance of the season just to try to help the farmer. I go to try to get business and advice about production reports.

In my opinion it is possible that conditions may be changed so that the Georgia market may be brought on a level with the North Carolina market in the matter of operating expenses We rush back from Georgia to North Carolina because the market is opening and if the farmers in Georgia suddenly took a notion to hold their tobacco like they did in North Carolina this year, I wouldn't go down to Georgia, nor would any of the rest of the warehousemen in Eastern North Carolina. They could not afford to, because they make more money here in North Carolina. There are about the same number of markets in Eastern North Carolina selling bright leaf tobacco as there are in Georgia. The markets in North Carolina last year sold approximately two hundred twenty five million pounds. It is more economical to handle the same operating expenses. We rush back from Georgia to North handle the same amount in a great many more but smaller markets. I cannot estimate how much of my income is derived from auction fees, how much from weighing fees or how much from commissions.

J. P. Bunn testified:

I live at Tarboro, North Carlina; I have been engaged in the tobacco factory and warehouse business for 15 years. I operated a warehouse in 1935 at Hazlehurst, Georgia, as a partnership of myself, A. L. House and W. A. Gardner. Mr. House owns the warehouse and our rent is set at the [fol. 490] amount of annual payments due on the purchase price, around $1200 or $1300 per year. All of us devote some of our time to the business. Mr. House spends more time in Georgia than the rest of us. Prior to the opening of the market all of us go to Georgia. Mr. House furnished

the capital also and he got the profits, less 10% each of gross sales paid to Mr. Gardner and myself.

In 1935, we had a small profit, $1353.89 with $2022.20 deposited in the registry of the court. Included in expenses is an item of $1400 paid on account to Mr. Gardner and myself. Other expense items charged are proper and reasonable amounts incurred in our operation.

Our warehouse is approximately 300 by 180 feet. There is only one other warehouse at Baxley. We sold 1,489,000 pounds of tobacco. It costs more to operate in Georgia than it does in North Carolina. We paid our auctioneer $400.00. The cash capital put up by Mr. House was $3000, but our overdrafts, that is, money advanced by the bank, ran as much as $20,000 or more on a day's sales. We paid interest and exchange.

I only operated one other year in Georgia. That was 1932 at Bainbridge, Georgia. That was a bad year; I lost about $7000.00. It costs more to operate in Georgia, among other reasons, a day and night shift is not so much a necessity in North Carolina as it is in Georgia, because of the short season down there. I have men employed for the season and they come down there for a job for three weeks time and then they all know it is going to be a short season and they will not get to work long and their expenses will be more. The buyers or the Board set the opening day and the closing date is set at some time and it may be a day or two variation in closing date. The farmers know that, and if they are going to close that sale or market, they have to sell their tobacco during that time, and they have not any place that is convenient to keep their tobacco as we have [fol. 491] and they, lot of time, cause quick marketing. But on the other hand, I think that is typical, because from my experience in reading people and coming in contact with the farmers, the farmers, I believe, want to sell it fast, and anybody that knows Georgia tobacco will tell you that the quicker it is sold, the better price it will bring. It does not keep its color and the tobacco will get bugs in it. The heavy tobacco they raise in Georgia, when it is colored will turn red, owing to your climate. My personal opinion is that you average a good crop in Georgia once in five years, while in North Carolina they come next to making on an average a good crop of tobacco every year.

Cross-examination:

The total profit for 1935, the amount deposited in court, $2022.20, plus $1000.00 drawn by Mr. House, plus the $1400.00 paid on account to Mr. Gardner and myself, and the undivided remainder of $1353.89, amount to $5776. and odd cents, which is to be divided between three of us—ten per cent of gross sales to me and to Mr. Gardner on North Carolina and Georgia business combined. If we lose this case, we have only $3754.00 profit.

Mr. House furnished the warehouse and capital and acted as sales manager. Mr. Gardner was his assistant.

I was part time auctioneer, but we paid another auctioneer	$ 400.00
The Bookkeeper was paid	275.00
Mr. Rolph as clip man was paid	150.00
Mr. Usury, assistant floor man, was paid	200.00
He was the only native Georgia man among our skilled help.	
Common labor cost	1464.65
Rent was	1272.00
Loss on leaf account was	800.97
Depreciation charged up was	300.00
Repairs to roof of warehouse	700.00
General expense, advertising, drumming, stamps, etc.	601.54

Bainbridge, Georgia, did not succeed as a market and after two or three years closed up. Warehousing in the extreme southwestern part of the State has not succeeded. We had night crews part of the time, but always laid off labor when not needed.

Mr. House has drawn $1000 for services rendered in 1935 and I have drawn $700 and Mr. Gardner $700. Those items [fol. 492] of $700 each made the $1400 I spoke of. The $1272 shown in the expense and designated rent was used in payment of an installment on the purchase price of the warehouse for Mr. House, one of the partners. The warehouse was purchased under that consideration that we would apply that much as rent. The item for repairs on the building also was for the man who owns the building and Mr. House got the benefit. The $800.97 shown on the expense account as loss on leaf account included loss for stolen tobacco, loss on tobacco bought and resold. The

floor sweepings are run into that account. The item of $300 shown in expense as depreciation was figured at 5% on the warehouse, warehouse equipment and baskets. As to whether my partner, Mr. House, seems to have gotten along very well with a salary of $1000, $1272 rent, $700 repairs, $300 depreciation, besides his share of the $1353.89 shown as profit, will say I don't think that an unreasonable amount. I think it all ought to be charged as expense.

Each year the opening and closing days of the market are set at approximately the same time by the United States Association and the members are composed of the warehousement and tobacco companies and you cannot operate a warehouse here in Georgia, North Carolina, Kentucky, or anywhere else on the tobacco market unless you have tobacco buyers, and they, therefore, control the tobacco markets here and everywhere and are going to control it.

Redirect examination:

A fair rent for our warehouse would be from $1000 to $1800 per season, but Mr. House took it over and our agreement was to pay the annual purchase price as rent and charge repairs and depreciation to general expense before we shared any profits.

Recross-examination:

Mr. House agreed to pay $6000 for the warehouse.

[fol. 493] S. A. McConkey (R. 513-526) testified:

I live at Tarboro, N. C., and have followed the occupation of tobacco warehousing about 9 years in Tarboro, N. C., Florida and Georgia. I operated and was connected with warehouses in Georgia in 1932, 1933, 1934 and 1935. In 1934 and 1935 I operated at Hazlehurst, Georgia, in partnership with Mr. A. H. Johnson. We are buying our warehouse, having agreed to pay $6500.00 for it in 1932. It is approximately 170 by 130 feet. We have added 69 feet to it this year. It is called the Planters Warehouse.

I have my books for 1934 and 1935 with me. We made a profit in 1934 of $2605.00 but before taxes, depreciation, personal expenses of the partners were set up. Both of us devoted our full time to the business in 1934. My partner

was auctioneer and I was assistant sales manager. We hired a sales manager and paid him $1500.00 for Georgia and North Carolina operations. We allocated $500.00 of that to Georgia and $1000.00 to North Carolina. In 1935, under the same arrangements, we had a total profit of $1863.27. In addition we deposited in the registry of the court $1798.94.

In 1934 we sold 543,576 pounds; in 1935 1,141,466 pounds. Ours is a small warehouse. The working capital required in 1934 was $25,000.00, and in 1935 $35,000.00. We had $5000.00 cash and the rest was borrowed at 8% interest and exchange. From my experience as a warehouseman I believe it costs more to run a business in Georgia than in North Carolina by at least 20 cents a hundred pounds. Most of my skilled labor comes from outside of Georgia. Prior to 1934 I worked as assistant sales manager. In 1933 I was paid $700.00 salary and in 1932 $200.00. 1932 was a bad year. I charged the old Georgia schedule of charges the two years I operated. No grower has ever complained to me [fol. 494] about the charges. For unskilled labor the code prices in Georgia are 18 cents per hour; and in North Carolina 22 1/2 cents per hour. I thought my salary in 1933 was a fair price and did not think the amount received in 1932 was.

Cross-examination:

The reason why my profits for 1934 were $2605.00 on approximately a half million pounds sold, and for 1935 were $3361.00 on a million pounds sold, is because it took a very small force to carry my business in 1934 and it took a large force to carry it in 1935. There were a great many more men hired in 1935 and many of them were inexperienced. Under the statutory charges I would not have cleared a cent in 1935 by the time I took out a fair rental for my warehouse, or expense or salary for myself. In neither year were these items charged. I paid $6500 for the warehouse and built a $2500 addition to it. Taking from the $2605. the difference between what I would have derived from the charges I actually made and those allowed by the statute, I suppose I would still have shown a profit of $1300. I pay more for negro truckers to handle the tobacco in North Carolina than I do the white help in Georgia. I find that the

negro truckers in North Carolina are more competent than the white truckers in Georgia.

Redirect examination:

I figured the charges received in 1934 per hundred pounds were $1.00 in North Carolina and between 90 cents and $1.00 in Georgia. In 1935 it was around $1.00 per hundred in Georgia. On the basis of the statutory charges it would be only about 70 cents per hundred. The new charges make about a 30 per cent reduction in some cases and a great deal more than that in some cases, almost half.

Recross-examination:

The 2 1/2 per cent commission on gross sales amounts, I would say, to one half, or a little more, of the warehouse income, but that depends on the price the tobacco brings.

[fol. 495] L. C. Pruitt testified:

I live at Waycross, Georgia, and operate at Petersburg, Virginia, during the winter tobacco season. I have been a tobacco warehouseman 20 years—at Lawrenceville, Virginia, Petersburg, Virginia, Jasonville, S. C. Timmonsville, S. C. and Waycross Georgia. I have operated the Farmers Warehouse at Waycross, Georgia, since 1927. We operate as a partnership. The first four years by Mr. R. M. Callie and myself and the past three years by J. K. Larkin and myself. We lease our warehouse on a tonnage basis, 15 cents per hundred pounds, $1.50 per thousand. My present lease expires in 1937. The last five years I have also operated at Petersburg, Virginia. It costs less to operate in Virginia than in Georgia. I have statements of my operations for 1935 and 1931. One reason why it costs less to operate in Virginia is that common labor is less and in Georgia we have a carrying charge of 1/4 of 1% on checks paid out. We don't have that in Virginia and you have to do a great deal more work to get tobacco to come to your warehouse in Georgia. I usually make my contracts for the skilled labor in April. I rent my warehouse in Georgia fully equipped. From 1930 to 1935 neither my partner nor myself has drawn a salary, and without this charge we made a profit each year. In 1930 we made approximately $600.00; in 1931 approximately $800.00; in 1932 approximately $100.00;

1933 approximately $600.00 and 1934 $800. in 1935, including the money deposited in the registry of the court, $3077.23; -1862.79 being the amount deposited and $1214.64 being the amount left for division. Each of these profits is divided between two of us and represents the only money we received from the business.

In 1935 we handled approximately 1,225,000 pounds; in 1934 approximately 295,000 pounds; in 1932 approximately 90,000 pounds; and in the other two years approximately 800,000 to 900,000 pounds.

[fol. 496] Our warehouse contains approximately 24,000 square feet. My auctioneer and two bookkeepers came from Virginia. The rest of my force were Georgia men. The auctioneer was paid $453.67—a guarantee of $250.00 and a commission of 40 cents on each thousand pounds of tobacco sold. I had 8 skilled employees, besides common labor. We had two shifts of common labor in Georgia and only one shift in Virginia. I use the scale of charges that has been generally made in Georgia for the last five years. The scale prescribed by the Legislature is less. The difference between the two is represented by the deposit made in the registry of the court at Macon. I have never charges as expense anything but legitimate items—the actual cost. Had the legislative scale of charges been in effect I would have lost money during the last five years. I run the sale and my partner looks after trying to get tobacco to the warehouse. He lives at Hoboken, Georgia. The Virginia scale of charges is a little higher than the old scale used in Georgia. In Petersburg, Virginia, I rent my warehouse at $1.20 per thousand pounds. The warehouse in Virginia will hold a quarter of a million pounds of tobacco and the one in Georgia will hold approximately 100,000 pounds. Our borrowed capital was about $10,000.00 in 1935.

Cross-examination:—

In Petersburg, Virginia, I made between $4000.00 and $4500.00 for 1934. As soon as the season closed in Georgia I go on to Virginia. The season opens there about October 1st. My leaf account in 1935 showed a profit of $290.34 and my purchase and sale of tobacco about broke even. The sale of the scrap or sweepings was included in this account.

[fol. 497] I contributed during 1935 $750.00 to the Waycross Chamber of Commerce to encourage farmers in ad-

jacent territory to bring their tobacco to Waycross. We have had a hard struggle to make the market good. This charge is entered as advertising. Blackshear, which is close by to Waycross, sold probably five times more tobacco than Waycross. The other markets in Georgia are varying distances from Waycross, Blackshear being the closest, and others being as far as 115 miles away.

I sold approximately six times as many pounds in 1935 as in 1934 and the average price was about the same. 1935 was the biggest year since 1930, measured in pounds sold. In 1935 the total commissions were $11,092.89; paid into court $1862.77, leaving $9230.12 net receipts if we lose this case. That would be the amount received by me as commissions under the statutory scale. There is also an item of income of $106.18 basket rental. The total expenses are $8467.10. leaving a profit of $1214.44, excluding the amount paid into the registry of the court, or $3077.20 if that deposit is included.

Labor was (excluding some of the higher priced men)	$1407.00
Paid to the Warehouse Association	106.82
Checkwriter	25.75
Tobacco sheets	71.75
Interest	46.71
Bank charges, exchange	517.98
Gas and oil	125.57
Advertising	987.58
Clip man	243.00
The bookman was also paid a salary.	
Extra office help	100.00
Stationery	94.30
Attorney's fees	50.00
A. C. Sweat, Solicitor and floorman	200.00
Alfred Sweat	60.00
J. F. Martin	58.38
Jim Martin	25.00
R. B. Tiller, bookkeeper	339.54
L. J. Bacon, solicitor and floorman	300.00
L. J. James, solicitor and floorman	100.00
Bishop, ticket maker	61.00
J. C. Heard, solicitor and floorman (the most influential farmer in the section)	550.00
[fol. 498] W. M. Penn, solicitor and floorman	100.00
Warehouse rent	1569.33

All of these salaries of solicitors and floormen were approximately $1393.00 and this was spend for soliciting business and helping during the selling season around the warehouse. I figured the reduction in charges would amount to about 18 per cent of my profits for 1935. I have been using the customary charges in Georgia by other warehousemen since I have been in Georgia.

The average season in Virginia is 4½ to 5 months. I borrow about the same amount of money in Virginia as in Georgia and use it 4½ to 5 months at 6%. (P. 540) In 1934 I paid approximately $1200.00 rent for a house in Virginia and approximately $450.00 for the house in Georgia (P. 539). In Virginia the warehouseman gets 2½% on gross sales and the commission amounts to more than the weighing charge and auction fee put together (P. 541).

The hurry indulged in during the marketing season in Georgia is due to the shortness of the season, and the shortness of the season is created by the fact that buyers are hurrying to get off to North Carolina and to Virginia. If we used different buyers for Georgia and the season in Georgia were made longer, three or four months for instance, it would, of course, interfere with a man operating in the Carolinas. It would not interfere with me in Virginia because I haven't opened yet, so that it is absolutely necessary in order that the buyers, warehousemen, auctioneers and expert laborers can get off to the other markets, that Georgia's crop be rushed into the warehouses. I do preliminary work in Virginia. I visit the farms, keep in contact with them, in order that my warehouse may get its share of tobacco. We have had a hard struggle to make the market good at Waycross. It has been so hard that the citizens, through their Chamber of Commerce and other- [fol. 499] wise, have raised funds to encourage the farmers in the adjacent territory to bring their tobacco to Waycross. During the year 1935 I contributed $750.00 to the Chamber of Commerce for that purpose and the amount is reflected in my statement here as expense. It appears as advertising. Every year during the panic, and even including the year 1932, which had such a small yield of tobacco in Georgia, I made a profit. Since 1927 have not had a year in which I had an actual loss as shown by my books. In 1931 my profit was $800.00, which would be $400.00 apiece for me and my partner for approximately two months work. $400.00 is a pretty good average price for an auctioneer. That is

what I paid this year and my auctioneer was very good. I have paid as high as $1000.00, but it is a pretty big amount.

I conducted a warehouse at Johnsonville, S. C., in 1920 and 1921. That was before I went to Georgia. The conditions in South Carolina at that time were about the same, I would say, as those in Georgia. Then South Carolina marketed tobacco loose. Economic conditions, I would say, were improving in 1934 and 1935. This item of $605.13 which is classed in the expense account as "general expense" is composed of various items and I can't tell you off-hand what the items are. The item of $200.00 to A. C. Sweat is an item of expense. He was a farmer we hired for a country man for his influence with the other farmers. The same is true of the $60.00 item to Alfred Sweat except that he also helped in the warehouse. L. J. Bacon was a farmer but helped work in the warehouse. He did various things, mostly truck. L. J. James was a farmer that worked in the warehouse. Those men were paid by me primarily for their influence over the other farmers and secondarily for the work they did in the warehouse. J. C. Heard was paid $550.00. He helped on the floor. He was a farmer, the biggest one down there in that part of the world. W. M. Penn was a farmer and was paid $100.00. Primarily it is [fol. 500] true that the amounts mentioned aggregating $1393.00 as paid to farmers was not spent for any actual work but for the influence that those men have in bringing other farmers to my warehouse and getting their tobacco to handle, but they did other work.

Redirect examination:

The reduction of the charges would reduce my gross income about 18% and my net profit more than 50%. The majority of the field men services were for the duration of the market. There were two men that helped me ride the country for three weeks before the market opened. One of them advertised the warehouse the year round. The main duty of the warehouseman is to get the highest bid he can for the farmers' tobacco. A warehouse cannot operate unless buyers from the companies are present. I operated in South Carolina in 1920 and 1921. I have earned on a salary basis $1200.00 as sales manager of a warehouse at Waycross. My duties were the same as those I now perform for myself. If I had charged as an expense a reasonable salary for myself, my business would have shown a

loss in each of the preceding five years, excepting 1935. The 1935 crop in Georgia was unusually good, both as to quality and quantity.

Recross examination:

I went into the warehouse business because I thought I would make more money than working on a salary of $800.00 and any profit on the leaf account. I furnished my own automobile and paid my own expenses. That was for three months' work, riding the country before the season and conducting the sale during the season. I got into business on the downward curve of the depression. If conditions had been the same as they were in 1929, I would have made more money at the warehouse business.

[fol. 501] PAUL MORGAN (R. 564-608) testified:

I live at Rocky Mount, North Carolina. I have been in the tobacco warehousing business since 1911 and am familiar with these operations. I am connected with Mr. W. E. Fenner at Rocky Mount and have operated warehouses in Kingston, South Carolina, Burlington, North Carolina, Nashville, Georgia, and Blackshear, Georgia. In 1935 I operated a warehouse at Blackshear, Georgia, under the style of "Big Z." It was the partnership of W. E. Fenner and myself. We leased our warehouse on a year to year basis. In 1935 the terms were $1.25 per 1,000 pounds of tobacco sold, with a minimum guarantee of 1000,000 pounds. The warehouse has 60,000 square feet. We have operated this warehouse since 1925, the year it was built. I have operated at Blackshear since that time. However, Mr. Fenner has only been my partner for the last three years. Prior to that time, my father and I operated.

In 1935 we sold approximately 2,700,000 pounds; in 1934 approximately 600,000 pounds. There are two other warehouses at Blackshear—the Farmers and Bentley's. I have my books showing operations from 1931 through 1935. I earned a small profit each year with the exception of 1932, and I show a rather nice loss that year. Our 1935 books are not complete. I have some small expense items still unpaid. My statement shows a profit of $6,785.39 for 1935, to be divided between two partners. Neither partner drew any salary, nor charged any of our expenses to the firm, such as automobile, gasoline, etc.

[fol. 502] In 1934 the net profit was $1504.84, divided two ways for a period of three months' service.

In 1933 there were three members to the partnership, Mr. Fenner, Mr. Lee, and myself, and we had a net profit of $5,765.02. I had a forty per cent. interest, the other two had thirty per cent. each. I drew no salary, but did draw $100 as expenses, which is included in the item of $300.

1932 shows a loss of $1,752.29. I operated *a loan* that year.

1931 showed a profit of $1,151.35, divided three ways. I drew 37½ per cent. of that profit. I drew no salary and did not have my expenses charged to the business that year.

I have no books for 1930 but my recollection is we sold about 3,500,000 pounds of tobacco and made a profit of approximately $6,000, divided three ways. I devoted my entire time to the business. Generally, in each year it required about three months. Mr. Fenner does not devote his entire time to this business but furnishes the financial backing.

In 1935 we made a cash deposit of $7500. Mr. Fenner became personally responsible for any loans. I had on deposit the $7500 on the opening date and spent that day $64,000 or $65,000 which represented borrowed money. We paid the bank for interest and exchange that year $1,579.19. We spent $465.45 on equipment for the warehouse and upkeep of the equipment. We charged the same scale of charges as we had in South Carolina when I operated in [fol. 503] that place from 1911 to 1918. At that time tobacco was sold loose in South Carolina. I understand that the rates in South Carolina have been changed since they started grading and tying their tobacco. The expense is a great deal larger in Georgia than in North Carolina. My reasons why the expense of operating a warehouse in Georgia is more than in North Carolina per hundred pounds of tobacco sold is on account of the shortness of the season, and in order to get the experienced help that we need and must have to help, they cost us more money. You cannot get a man to go down there (Georgia) for the same rate as you pay him here (North Carolina) and the labor is just as inexperienced as can be. For instance, on the first half million pounds of tobacco I sold, I think my pay roll had 109 names on it for common labor. The bank charges us more to pay off for us. It just costs more to operate down there

for a months time than I can operate up here for four, five or six months time. In Georgia we employ two or more shifts of labor. We have to have a full force to work all the time, because the tobacco is coming in continuously. In North Carolina this is also true, but the force consists of a great many more people, common labor, in Georgia than it does here. Due to the shape of my warehouse (in Georgia, I have to have practically a double force in my house all the time. One cannot see around my house from one place to all the others. I have to have three night watchmen at my house at one time. I lease my warehouse around Christmas or about the first part of the year and I contract with my skilled labor maybe not all at one time but as I can get in contact with them I see what amount of skilled labor I will need and do so.

We deposited in the registry of the court the difference between the old scale and the statutory scale, $3841.61. That is not included in the amount of net profit heretofore given. If this case is won and the funds returned to us, our profit will be in excess of $10,000.00. None of my customers have complained with reference to the unreasonableness of the charges heretofore in effect in Georgia.

[fol. 504] Cross-examination:

I employ farmers as solicitors or tradesmen and they put out their labor. They are men of experience in their line, that is to say, as tradesmen, men to look after the trade when it comes into the house and to help get it in there. I have the men listed here. I paid Lonnie Sweat $225 for him and his automobile. He is a resident of Blackshear. C. W. Eunice, a farmer and fertilizer dealer, was paid $200. C. M. Mobley was paid $300. He rode the country June and July until the market opened and then every week end. He lived 70 miles from Blackshear in Tatnall County, and he would look after the trade after it came in there before and after the sale and so did Mr. Eunice. Mr. A. F. Thomas was paid $25. He is a hardshell preacher. C. Moore Fuller was paid $256. I have never estimated what proportion of the entire income received from the operation of my warehouse is derived from the 2½ per cent commission on the gross sales. The amount depends entirely on the price of tobacco.

I have operated the "Big Z" at Blackshear since 1925. Prior to that time, my father and I operated a brick ware-

house which is now the Bentley Warehouse. I operated in Nashville, Georgia, in 1919 and moved to Blackshear in 1920. My father died during the season of 1930 when Mr. Fenner became my partner. From 1919 I made a profit, with the exception of 1925. I can not give you any idea of the amount of profit prior to 1931. The charges I used at Nashville are the same as I am making now. The statutory charges are the same as those in North Carolina. I do not know about South Carolina. I sold $1,405.03 worth of sweepings and credited that to my loss on leaf account, making my leaf account show a small profit of $267.62. The resales on my leaf account were at a loss. I sold my leaf as opportunity presented itself. In 1932 I could not sell the sweepings at any price. One year I had a loss on my leaf account of $800, after crediting sweepings to it.
[fol. 505] 1933 showed a loss of $128, I think. I think my profit in 1929 was between $4,000 and $5,000; I am only guessing. In 1930, approximately $6,000. Rent was paid at the rate of $1.25 per 1,000 without a minimum until 1932, and in that year the minimum was $1500. If I sold 3,000,000 pounds, the rent would be $3,750. I do not think that high. The building cost $50,000 when built and is only used four week- in the year. It was built in 1925.

As rent I have paid $1.25 for each thousand pounds of tobacco sold without a minimum amount until 1932 and the minimum rent then was fixed at $1500 and that is what I paid ever since I have had the house. At Nashville I think I paid $1.00 per thousand pounds sold. The building which I operate at Blackshear cost $50,000 when it was built in 1925 and building material and costs then were very high.

The item of expense in the amount of $56.82 represents our part of the $2500 bond we were required to deposit with the Federal Court in this litigation. It is my understanding that all warehouses in Georgia charge the same but when the industry first started they did not. I do not know how they managed to get a uniform rate. The item of $250 shown as rent on the expense statement in 1935 was caused by 1934 operation. It sorta went to both years and was more convenient to handle it that way. It was paid in 1935. My mother owns the house and the minimum for 1934 was $1000 and we raised it to $1250 by paying the additional $250. The $1000 the year before could not meet her expenses for taxes and insurance.

I have a $13 bad debt loss. Bond prorate $56.82; advertising, $129.30; roof repairs $465.45. The owner was willing to pay $250 of this repair, but it cost over $700 to make the repairs. General expenses, $1702.67; rent, $3,108.05; common labor, $1,438.87; interest and exchange, $1,579.19; insurance $215.25. Skilled labor salaries $4,469, net commis- [fol. 506] sions were $19,816.32. Leaf profit, $267.02; total income, $20,083.34. Total expenses, $13,297.95, but my bookkeeper tells me between $300 and $500 more expenses are unpaid. The amount deposited in the Federal Court is included in the total of expenses. $10,000 approximately, would be the net income under the old scale of charges. Under the statutory scale approximately $6200 would be the net income. I think the other warehouses in Georgia charge the same scale as I do. I know they did not do this at one time—that was when they first started up on different markets. There has been no agreement among the warehouses as to charges that I know of. I had no part in it. I am a member of the Georgia Tobacco Warehousemen's Association. I know of no Resolution adopted by the Association with reference to uniform charges. My mother owns the warehouse I use.

Salaries were: Assistant Sales Manager $380; bookkeeper $120.35; auctioneer—$700; Clip man—$300; another clip man—$275; ticket market—$185; general assistant—$236.50; floor man—$144; floor man $165; doorman—$25; check out man—$80; another check out man $80; assistant pay-off man—$95; assistant pay off man $80; leaf man $144; night foreman—$80; scale man—$80; check off man—$64; check off man—$64; leaf man $20; utility man $50; check off man $75; check off man—$67.50; assistant night floorman—$90; weighman—$150; trademen or solicitors—total $750; the solicitors or trademen work in the warehouse during the season and rode the country also. Net profits in 1934 were $1,504.84. Total sales were about 6,000,000 pounds. 1933 profits were $5,765.02.

In 1932 we had a loss. Sold only 200,000 pounds. The amount of the loss was $1,752.29. My profit in 1931 I think was $1,151.35. My estimated profit in 1930 was $6,000. I figure the difference in my profits made by the statutory scale would be 25 per cent reduction. I earned in North Carolina $400 per month working for Mr. Fenner, and Mr. Fenner is my partner in Georgia.

[fol. 507] W. L. LEATH testified as follows:

My home is in Burlington, N. C. I am a tobacco auctioneer and warehouseman, and have been managing the warehouse for nine years at Danville, Va. I operated a warehouse in Georgia since 1920, with two other partners. I did not operate in 1921, 1922 or 1923. I went to Adel, Ga. in 1927, 1928, 1929 and 1930. In 1931, 1932 and 1933, I worked on salary as an auctioneer. In 1934 and 1935, I operated individually.

I have been working in a warehouse since 1907—about twenty-nine years. In 1935, I operated Leath's Warehouse, in Adel, Ga. as an individual.

I usually go down to Georgia around the fifteenth of December and carry tobacco seed, and give instructions about the seeding beds and seed lots. I go back in March at the end of the seeding season. About the last of May, I go to Georgia and remain there until the end of the selling season. I do my own auctioneering and run my own sales, buy tobacco and practically do everything about the warehouse.

I have a verbal lease for my warehouse, one year at a time, at Two Thousand ($2,000) dollars a year. It contains approximately forty thousand (40,000) square feet. My contracts with skilled labor, book and clipmen and ticket markers are made along in April and May of each year.

In 1935, I sold 1,401,000 pounds; in 1934 approximately 670,000 pounds. In 1934, I made a small profit, $258.46, with no charge for my time, skill and services. That amount is all I got for the year's work in Georgia. In 1935, I deposited in the registry of the court $1,994.64. That is approximately the same amount as I show as net profit. From experience, it costs more to op-rate in Georgia than it does in Virginia.

In 1935 the market at Adel ran for about 20 days. My bookkeeper was from Danville, Va. and came to Adel a week or ten days before the market opened. He worked something like thirty days. Mally Joyner, a floor man, and [fol. 508] M. A. Shaw, the assistant floor manager, worked in the country three works before the market opened. C. D. Shaw was a floor trade man and received $200. He worked the country. J. J. Compton was a trade man and received $200. T. P. Daughtry was a trade man and received $200. Frank Mitchell was a trade man and received $225. Shace

Jones a trade man and received $125. Lee Baskins was a trade man and received $75. The item of $485 shown in expense represents the value of tobacco stolen or misplaced.

I borrowed in 1934 Fifty Thousand ($50,000) Dollars from the First National Bank of Valdosta, Georgia. Paid interest at eight (8%) per cent and exchange at one-fourth of one per cent.

[fol. 509] In 1935, I borrowed Seventy Thousand ($70,000.00) Dollars, under the same arrangement. In 1926, I realized $846.00, I acted as auctioneer and got one-half of the profits. In 1930, I made $1600.00 for my part. These were the only two years that I broke even in Georgia.

In 1920, we lost $1800.00 (three of us). In 1924, we lost $286.00 each, the three of us. That was cash money necessary to pay us out for those years. In 1926, I think I have testified that each of us made $846.00, but that same year we opened a market at Live Oak, Florida, and we lost $600.00 on that venture.

In 1927, I worked on a salary as salesmanager and received $1,000.00. I worked for the Cook County Warehouse at Adel, Georgia, which was a stock company. In 1930 the three partners divided $2600.00. In 1928 and 1929 we had a small profit each year. In 1931 I worked on a salary as auctioneer and made $1,000.00. In 1932, the same except I was paid $700.00. In 1933, I was paid $1,000 as auctioneer. The years I worked on a salary, I did not participate in profits, nor was I liable for losses.

In Danville, Virginia, I managed a warehouse and had an assistant. I earned $1500.00 and my assistant $1,000.00. In 1935, I acted as auctioneer at Danville, Virginia, and my salary was $2,000.00 for a period from August 26th until Thanksgiving day, approximately three months.

Cross-examination:

Adel, Georgia, is one of the small markets. There are two warehouses. My profit for 1935 would be $2,058.40, plus the amount deposited in the registry of $1,994.64 in the event we win this case, approximately $4,000.00:

The items of expense are:

[fol. 510] Bookkeeper	$550.00
Clerk	380.00
Bookman	300.00
Floorman	355.00
Assistant Floor Manager	275.00

These two worked the country:)

Floor and Trade Man	279.00
Trade Man	200.00

(These two also solicited and worked in the country:)

Floor Man	200.00
Trade Man	200.00
Ticket Marker	150.00
Assistant Auctioneer	150.00
Trade Man	125.00
Trade Man	125.00
Trade Man	75.00
Assistant Office Man	75.00
Office Clerk	58.35
Coupon Man	58.35

Making a total of $3,530.70 for salaries.

Advertising	203.36
General Expense	853.24

(That includes stationery, ice water, incidental expenses, etc.)

Taxes	156.89
Exchange and Interest	379.91
Code Administration	35.05
Leaf Account Loss	127.44
General common labor of approximately 40 men	1245.44
Rental of warehouse	2000.00

We received the following income:

Commissions	10,507.88
Credit Errors and Correction Account	11.42
Basket Rental	86.00

Making a total income of $10.605.30, plus $1,994.64 if we win this case.

I worked three shifts of common labor, during twenty-four hours and many times my salaried men worked late into the night with them. The amount of salaries paid included their earnings for the entire season.

Redirect examination:

The trade men furnished their own automobiles and paid for their gas, oil and repairs.

[fol. 511] LEON OETTINGER testified as follows:

I live in Lexington, Kentucky. I followed the occupation of tobacco warehouseman for twenty two or twenty three years, but have been familiar with the operation since I was a boy, about forty years.

I have operated a warehouse at Conway, S. C. Douglas, Georgia, and helped operate one at Lexington, Ky. Have operated at Douglas, Ga. since 1925. I am a member of a partnership, under the name of O. K. Tobacco Warehouse. There are three partners and we own our warehouse. We bought it in 1924 for a total investment of $24,200.00. It has approximately 44,000 square feet. I have my books here, except for the year 1924, when we did not operate separately. Mr. Hughes has the books for that year, we combined with Soaper's Warehouse. In 1935 my warehouse sold approximately two million pounds of tobacco. We only employ two solicitors. Since I have been actively engaged in the industry in Georgia, I have also been actively engaged in the industry in Kentucky.

In 1930, we had a profit of $2,017.26, divided between two partners. That year we charged a salary to each of us of $1000, making our total individual receipt $4,017.26. In 1931, we had a net loss of $3,061.52, but we charged salaries of $1,000, depreciation of $1,800 and interest on investment of $1,600. In 1932, the net loss was $3,829.26 with the same charges.

In 1933, Mr. Barker joined our partnership, buying an interest, and charging $1,000 for his salary also. Prior to that time he was an auctioneer. Our loss was $947.37 after paying salaries. In 1934, I have no figures. For 1935, my figures are incomplete as we have a great deal of tobacco on hand, approximately two million pounds.

[fol. 512] Gross Commissions for 1935 were $17,246.48

which included

Basket rental of	119.00
Expenses, salaries three partners	3,000.00
Each bookkeeper	325.00
Two calculators (each)	300.00
Floor Manager	250.00
Two weighmen	225.00
Two solicitors	900.00
Common Labor	1,990.16
Making a total wages and salaries	7,565.16

[fol: 513] Attorneys Fees	$181.82
Code Authority	45.66
Taxes	431.96
Stationery, printing, etc.	327.04
Insurance	472.82
Interest	1,310.12
Board of Trade	15.00
Current bills	1,084.22
Adjustment	62.98
Loose tobacco	485.49
Exchange	1,586.33
Bad Debts	50.80
Amount deposited in registry of court	2,069.85

Subtracting the total expenses from the income, leaves a profit of $723.21.

We have not disposed of all the tobacco in our leaf account. We paid $7,215.34 for the tobacco on hand and have not been able to sell it at this time. It is now at Kingston, N. C. If it is sold now, it will be at a loss. The amount for which we sell this tobacco, will determine whether we make a loss or profit. For this reason, we cannot give the results of our leaf account at this time.

For the $1,000.00 charged as partners' salaries, each of the partners devoted his entire time to the business. Mr. King and myself as sales managers and Mr. Barker as auctioneer.

In 1935, we had about $9,500.00 in cash and borrowed $55,000.00 from the Coffee County Bank. We paid interest at eight (8%) per cent and one-fourth of one percent exchange. In 1934, approximately $8,500.00 cash and $35,000.00 borrowed. In 1933, approximately the same amount cash and $40,000.00 borrowed. In 1932, $6,000.00 cash and $15,000.00 borrowed. In 1931, approximately $8,500.00 cash and around $50,000.00 borrowed. In 1930, approximately the same amounts.

At Conway, S. C., the interest and exchange rates were lower than in Georgia. We have charged the old scale of rates. In my opinion, that is a reasonable scale of charges for Georgia. The legislative scale made a difference in our earnings of $2,969.85 for 1925. I figure had this scale been in effect for the past five years, it would have reduced our [fol. 514] gross income approximately eighteen per cent. Our net income would have vanished. I consider solicitors

a necessary operating expense. Every warehouseman has them.

Cross-examination:

I have had no special training, other than practical experience. In the tobacco industry buyers and warehousemen consider that they have a series of markets beginning with Georgia as the first market and then the market of the Carolinas and Virginia and Kentucky coming in rotation. The manufacturers and the buyers, the warehousemen and the auctioneers and other skilled help engaged in the marketing of tobacco consider the industry as a whole beginning with Georgia and ending with Kentucky, and for the most part, they devote their activity to the industry as a series of operations. As to what line of business I am engaged in other than the tobacco business, I am a calculator on a race track in Kentucky, Texas and Ohio, and have worked in Cuba and Nebraska. I was trained in the mercantile business in a department store. I still calculate at the races. The race track season comes between the Georgia and Kentucky season. I was at the race tracks this year approximately six weeks before I went to Georgia and on an average earn about $1000 a year on the tracks. Last year I was engaged in the markets in Kentucky from November until the first or the middle of March. I was soliciting from the first of November to the first of December for the warehouse. I am usually engaged in the marketing end of the tobacco business in Georgia on an average of four weeks per year and, including the soliciting period, about ten weeks per year. When I first started in the tobacco business I followed a man four or five days and he showed me how and then I took the job as a ticket marker and my next step was calculating. I cannot say how much experience I have had as a calculator. I was [fol. 515] calculating six or seven years before I went into the warehouse business myself, but prior to the time I was given a calculator's job I had served only as a ticket marker.

The years from 1930 through 1935 have been the worst years since I have been in the warehouse business. During the period of depression every line of business must adjust itself in its items of expense as to salaries and labor and

general expense to their income, but during the depression in the warehouse business in Georgia I continued to pay myself the same $1000 salary. It was paid during the bad as well as the good years.

By the simple expediency of requiring the farmers to bring their tobacco to the market in the day time, there can be eliminated in Georgia the expense of the night force. That would interfere with the ordinary marketing of the crop but it could be done. It could be done at a great deal of hardship on the warehousemen. I still say the night delivery is not necessary and the deliveries could be made in the morning but it would require a larger force and extra scale men and more labor in the daytime than we use and it would cause a considerable hardship on the warehousemen if the farmer did not bring it in at night. The bringing in of the tobacco at night helps the warehouseman not to ruch it and gives him more time to straighten it on the floor.

In Kentucky they have a different kind of tobacco from that that is sold in Georgia. As the skilled help follows the market from Georgia to Carolina, Tennessee, Virginia or Kentucky, there is not real necessity for charging more for their services in Georgia than in any other place, except with respect to the addition caused in living expenses and transportation. That's about the difference we pay them.

In 1932 Mr. Barker, my present partner, was my auctioneer, I paid him $300 for his services. Since he has been a partner, regardless of what we made on the year's operation, he has been allowed to charge the business $1000 salary.

[fol. 516] L. E. Currans was paid $700 which was charged to expense. He was a solicitor and we paid him that for his influence in the community and for getting tobacco to our market.

The attorney's fees shown as $181.92 in the statement of expenses represents a charge that was made necessary by reason of our filing this suit. That is not a nominal charge for operating a warehouse.

In our expense account we carry an item for repairs and another for depreciation. We charge for depreciation and also for repairs in keeping our building in a state of proper repair.

From the sales blanks or tickets I could determine the amount of my income derived from auction fees, weighing charges and commissions respectively. The blanks are

down in Georgia. They are available. I have never calculated how much my income would be affected with respect to those three items segregated from the enforcement of this law. Their effect, however, is about 17%. The extent to which the new statute would affect our income could be determined by that calculation.

I have not contended that a part of the charge made for warehousing tobacco in Georgia was for assisting the farmers in curing and harvesting the crops. I have not said we made any charge. I said we assisted them all we could while we were down there in preparing this crop for market and our primary reason for being there was soliciting to get tobacco to our market and warehouse.

Personally I have never grown any tobacco nor have I cured any and I have never hauled it from the farm to the market. We lend the growers a good deal of money to help get the crop harvested and we expect from that to get a return in his business in the warehouse, and primarily our object in going to Georgia and engaging in the pre-season [fol. 517] work is to increase our tonnage and it is made necessary by reason of the fact that all of the tobacco warehouses engage in that similar activity. It is possible that if none of the warehousemen engaged in that activity each warehouseman would do on the whole for the period of the market about the same proportion that he does now.

This is the way the 1933 statement was sent in. We have never been able to get the itemized account except from the ledger. The books were in Kentucky and we have asked them to forward them but have never been able to get in touch with him and don't know where he is at present. The leaf account has always shown a loss with us, and in the leaf account are added the proceeds derived from the sale of sweepings to reduce the amount of the loss.

The earnings of the warehouseman is dependent upon prices, the quality of the crop, the tonnage and also upon the efficiency of the warehouseman and his help.

I have had some training in the mercantile business and worked as a calculator on various race tracks. I earned from $25 to $50 a day at this work. I worked in a warehouse in Kentucky, soliciting tobacco prior to the actual season there. I have earned $1,000 for the work in Kentucky for the last two years. Two years prior to that $1500 a year, and the year prior $2,000. My first experience in the tobacco warehouse business was as a ticket marker, then

I worked as a calculator before I went into the warehouse business for myself. I bought a warehouse at Conway, S. C. and operated for five or six years there.

We do not get any income from our warehouse other than the use of it for tobacco marketing. Our bookkeeper operates a warehouse in Kentucky. We had calculators too. The most money I received as calculator in my life was $1400 and the lowest was $600. The floor manager earned $250, he worked around the warehouse repairing it prior to the season and worked in the warehouse also. Weighman received $140.

[fol. 518] One solicitor I paid $700—he b-ought in considerable business. The man in charge of the leaf account, $275; The item of current bills, $1084, covers repairs to the warehouse, advertising, etc. I have no record of my earnings prior to 1930. I think we made around $8,000 or $9,000 in 1929, if that was the big tonnage year. I have no idea of my 1928 profits, but I think around $6,000. I think in 1927 we made around $3500. My guess for 1926 would be around $6000. These figures are not accurate but are only approximate. I do not know whether we charged the salaries for the partners for those years or not. My guess is that some years we did and some we did not. The figures prior to 1930 may be twice what I've given and might be one half, I don't know.

In 1925, I would guess we made around $8,000. I do not know. Mr. Barker bought an interest in the business after having been with us three years.

Depreciation is charged at the rate of four per cent. We value it at $20,000. In the last ten years, we have written off $4,200. The original cost was $24,200.00. I hardly think it worth $20,000 now. Over a period of ten years, we have depreciated the warehouse forty per cent.

During the years I have operated in Georgia, beginning in 1925, I have charged 4% as depreciation on cost of the building. We now value it at $20,000. It cost $24,000. I don't think it would sell for $20,000 on the present market. Everybody has had to value their property down, and in the ten years we have operated we have charged 40% of the cost of the warehouse off as depreciation and at the same time we have kept it in repair at the expense of operation, and during the years we have operated down there we have jointly charged as expense interest on our investment

in the warehouse, repairs and depreciation in addition to salaries.

[fol. 519] During the year 1935, I can recall only three farmers who sent for me for advice with reference to their crops. I advised others who asked my advice when I called on them.

Redirect examination:

In my opinion, the fair rental value of our warehouse is $3,000 for the season.

Recross-examination:

Other warehouses in Douglas rent for $3500 a year. On a basis of $1.00 per 1000 pounds, the average rental on our warehouse for the past four years would be approximately $1475.00.

In 1935 we sold at our warehouse approximately two million pounds. I do not know the customary charge for rent on a tonnage basis. I think some of them rent for $1.00 per thousand pounds up to a million pounds, and 15 cents over that. On that basis our sales in 1935 would have given a rental of $2500; in 1934 a rental of $900; in 1933 a rental of $1900; in 1932 a rental of $600; and the average rental on this basis would have been $1475.

Redirect examination:

I am positive that one warehouse is renting in Douglas for $3500. Douglas has two sets of buyers.

Park Bernard testified as follows:

I live at 100 Sommerset Road, Knoxville, Tenn. I am a tobacco warehouseman, and have engaged in this business at Greenville, Tenn., Morriston, Tenn., Knoxville, Tenn., Wallace, N. *E.*, Richland, N. C., and Adel, Ga., in the last twelve years.

I operated at Adel, Ga., as the Cook County Warehouse, a partnership of myself and Mr. Townsend. We have operated for the last two years, 1934 and 1935. We lease our warehouse of some four thousand square *g*eet. We rented in 1935 on a basis of $1.25 per 1000 pounds. In 1934, we agreed to pay $1500 rental, but due to the poor season only paid $600. The rental totaled in 1935 approxi-[fol. 520] mately $1692.00. I furnished one half of the

capital required, solicited tobacco and helped on the sale during the season as sales manager.

I have an experienced book-keeper, two clip men, two bookmen, weighmen and an auctioneer. All of them were imported from out of the State from North Carolina and Tennessee. The auctioneer was paid $450 for 1934 and 1935. The bookmen in 1934 were paid $250. In 1935 we had two men we paid $450 between them. The bookkeeper's salary was $250. The ticket marker was paid $175.00 for every season. I had between fifteen and twenty common laborers.

For the past two years (1934 and 1935) we have had as many shifts as the Code required with reference to the number of hours a man might work a day and week. In Georgia, the warehouse remains open twenty-four hours a day, because tobacco is moving practically at all hours and you have to be open to receive it. The same condition with reference to staying open twenty-four hours obtains in Tennessee and North Carolina. In Georgia it is a more frenzied atmosphere because of the short duration and anything you do in a hurry requires more people and more lost motion.

I operated in 1934 and 1935 in Knoxville, Tenn. I charged the same scale at Georgia both years.

I deposited in the registry of the court for the 1935 season, $2050.00, which represents the difference between the scale I charged and the statutory scale. In 1934, we had a loss of something over $500. We had a profit in 1935 of approximately $3300, not including the amount deposited in court. We did not charge any expense for the partners and their services, that is, the partners drew no salaries, neither did they charge any expenses, except gasoline.

[fol. 521] Our gross income in 1934 was about $5,000.00 against that was charged:

Rent	$600.00
Acutioneer's salary	450.00
Book and clip men	400.00
Ticket marker	175.00
Bookkeeper	250.00

I do not have the exact figures for the other items, but the expenses added up were more than our income, so the owner made a concession in the rent.

In 1935, we had a gross income of approximately $11,000 and expenses totalled approximately $3300 less than that sum. In 1934, we sold less than 500,000 pounds and in 1935 approximately 1,200,000.

The charges in Tennessee are awfully close to the Georgia charges.

With reference to whether or not, if the tobacco was brought by the farmers of Georgia to the warehouse less frantically and less hurriedly, that the warehouses would stay open until it was all sold, my answer is "Yes sir," they would stay open.

With reference to what determines the closing of the warehouses in Georgia, the companies who buy this tobacco cannot make any money unless they have tobacco, so they will stay anywhere and as long as necessary, or as long as there is any tobacco there, or enough to warrant it. In determining the closing of the Georgia markets, this is usually decided by the warehousemen, who are supposed to be in fairly close touch with conditions so far as the amount of tobacco that remains to be sold is concerned, and if the warehousemen insist on staying open, the companies go to him there until he sees it is time to close. The warehousemen determine from the grower whether there is any tobacco remaining to be sold and the closing is determined by whether any tobacco remains to be sold. The buyers will stay at a market as long — the tobacco will come in.

[fol. 522] When the tobacco ceases to come in, we will announce that we will close on a certain date.

We had approximately $7500.00 working capital in 1934-35. We borrowed between $40,000.00 and $60,000.00, paying interest and exchange.

Cross-examination:

I was working in the securities and oil business in Tennessee. Approximately sixty per cent of my time is taken up with that. I only operate in Tennessee and Georgia in the warehouse business. I have operated in North Carolina.

Burley and flue-cured tobacco are marketed practically the same. In Tennessee, my associates and myself have over $5,000.00 invested in the burley tobacco. We own our warehouses there but we borrow capital to operate on. Last season, 1934-35 in Tennessee I had a profit of about $1250.00

from tobacco warehousing there. I personally lost about $8,000.00 on my investments in the tobacco warehouse business in Tennessee. My only training in tobacco has been by practical experience.

My partner is originally from North Carolina, who operates with me in Georgia. He has been familiar with tobacco operations for thirty-five years. The loss for 1934 was $485.53. We have charged for gasoline, oil and traveling expenses of the partners in soliciting tobacco, $803.65. Miscellaneous expenses, advertising, lights, water, etc., $1405.14; labor $575.46 and salaries $1638.25.

The tobacco companies determine the opening of the market. The absence of any tobacco to sell determines the closing. All of the markets do not close at the same time. In 1935, some of my associates went on to North Carolina to operate, but we had sales at Douglas and Vidalia for several weeks after the closing of the market. The warehouse association does not control the charges. I could charge, if I wanted to, different charges from other warehouses. There was a discrepancy in several of the charges among the warehouses this year. There were some in 1934. [fol. 523] I am positive of that. In Tennessee we have a four per cent commission, and only one other charge. The tobacco is sold at auction, however, the same as it is in Georgia.

With reference to the working capital referred to as being the difference between $7500 cash which we had and the amount borrowed, will say the money was borrowed from the bank down there but there was not as much as $40,00- or $60,000 necessary after the first day's sale, because the checks were coming in from the companies and although we might have an overdraft there that was taken care of by the checks as they came in and by borrowing from the bank overnight.

My books are in Mullen, S. C. They were supposed to have been here on my arrival but they have not shown up as yet.

I am engaged in the securities and oil business in addition to my line of business as a tobacco warehouseman. I devote approximately 60% of my time to the securities and oil business which is located in Tennessee, and with reference to the warehouse business I operate both in Georgia and in Tennessee. I have operated in North Carolina and

am familiar with the operation of tobacco warehouses in all of the tobacco growing states. Every tobacco growing state has statutory regulation for warehouse charges for flue cured bright leaf tobacco and until the recent Act of the Legislature, Georgia was the only State that did not have statutory legislation of such charges.

My profit from the Tennessee operation in 1934 was $1250, and I would say I devoted three months to that operation, but I lost, considering my capital investment in Tennessee, $6750, as we gave up our property there. I have never had any actual experience in growing tobacco, nor have I had any first hand experience curing it.

Besides warehousing, my partner, Mr. Townsend, is engaged in business as an independent buyer, and by that I mean he buys and holds his purchases for an opportune [fol. 524] time to resell to the companies.

In our expense account for 1934 is $400 paid to C. R. Townsend and myself for automobile. Without explanation that might seem a little too high. Two years ago there was considerable agitation at Adel over two sets of buyers. They thought they were going to get them and did not get them and as a result the market got a black eye. In fact, some of them thought they might even los- their market and the citizens of Adel asked us to *ve* unusually diligent in working the field to see if we could keep Adel from losing their market. We feel that we were successful.

There is another item in the same expense account of $214.25 for traveling during the same season and another item of $189.40 for traveling during the same season. We had in addition to Mr. Townsend's and my automobile another automobile that we bought for use during the tobacco season, the expense of which is entered in these items. To make the loss of $485.53 as shown in the statement for 1934 we charged over $800 as expense for the use of automobiles belonging to Mr. Townsend and myself for traveling over the belt for two months prior to the time the market opened.

We do not go out and pay farmers for their influence in getting tobacco to our house. In my opinion, that is not a legitimate charge against the farmer for warehousing his tobacco, and I consider it against the ethics of warehousing. I am familiar with the ethics of warehousing in those belts in which I have operated and that is what I base my state-

ment on that if such a thing is done it is unethical. I do not consider it necessary or ethical.

I have no investments in Georgia personally.

I consider $1.00 per thousand pounds for tobacco sold to be a reasonable rental for the use of a warehouse, but different conditions prevail in different markets during different seasons.

The amount expended by us in 1935 as expense for servicing the farmers was about one half what it was in 1934, [fol. 525] and I have explained the peculiar conditions that existed in 1934.

They fix a short marketing season for Georgia so as to enable them to engage in the other markets and they continue to run in that way.

In so far as volume is concerned and average total yearly gross receipts the Georgia crop and the east Tennessee crop are fairly close.

Redirect examination:

Expenses as set up against our income are actual, proper and necessary items for carrying on the business.

JOHN C. MEADOWS testified as follows:

I live in Vidalia, Georgia. I am in general trade and was a tobacco warehouseman.

I am a general trader, tobacco warehouseman and engaged in turpentine business and various occupations. In 1933 I bought and sold mules to the farmers, and in 1934 I traveled for the International Agricultural Corporation, and this year, I am also engaged in the turpentine business.

I have been connected with tobacco warehouses since I was fourteen years old, which is approximately twelve years. I have operated since 1930 at Vidalia. We operate athe Vidalia Tobacco Warehouse Company, which is a partnership—four others besides myself are in it. Four of the partners are from Georgia and one from North Carolina. We have two warehouses. One is owned by the partners and one being a corporation. We have operated the two as one business since 1930. One warehouse contains approximately 60,000 square feet and the other 40,000 square feet. The larger is a brick and concrete building. All of the partners devote their time, skill and experience

to carry on the tobacco warehouse business during the season.

[fol. 526] Mr. J. B. O'Connor is a general utility man. He does not spend all his time during the tobacco season at the warehouse but he is there at least several hours a day. With respect to the time consumed outside of the selling season from approximately May 1st up until about August 1st, I personally solicit tobacco and W. L. Brown solicits business approximately from July 1st to August 1st. E. L. Meadows is supposed to be the general financial head of the business. In 1935 we imported four skilled laborers. In 1934 we imported eight and also eight for 1933, nine for 1932 and fifteen for 1931.

I am the general manager, Mr. Boland, from North Carolina, is sales manager. The other partners work on the floor also. We all solicit tobacco. We imported the greater percentage of our skilled help. I do not operate a warehouse at any other place except Georgia.

In 1935, we had 2,800,000 pounds first hand sales; in 1934—912,000 pounds; in 1933, 1,900,000 pounds; 1932 approximately 500,000 pounds; 1931 around 2,500,000 pounds. In 1935 we deposited in the registry of the court $4,728.99, as the difference between the charges actually made and the charges prescribed by the statutes.

The gross income for 1935 was $28,082.94. Total expenses $19,176.97, including the amount deposited in the court, leaving a profit of $8,505.97. The only partner to receive any payment which is charged in expenses was Mr. Boland who was paid $1,000 which included his expenses.

[fol. 527] This included his traveling expenses to North Carolina and back on several trips. In 1934, the total income was $9,571.67—total expenses $6,849.80, leaving a profit for distribution among the partners of $2,721.87. We charged that year as expenses, payment to Mr. Boland of $750.00, myself $750.00 and Mr. Brown $250.00.

In 1933 total income was $14,005.02—total expenses $9,246.11, leaving a net profit of $4,758.91. In 1932 income was $5,150.05—expenses $5,016.73, leaving a profit of $43.32. Mr. Easley in that year was a partner in place of Mr. Boland, he drew $1,000.00 and I drew $666.67. Mr. Easley was with us also in 1931 and 1932.

In 1931 total income was $15,418.05—total expenses $18,260.00—net loss $2,741.95. That year we paid Mr. Easley

$1,500.00 and myself $875.00. In all of these years the losses and profits were divided among five partners. We have invested in the two warehouses approximately $74,000.00. In 1931 we paid a rental of $7,000.00, divided $4,000.00 to the big house and $3,000.00 to the smaller. In 1932 we only charged $302.17 for the little warehouse and $604.14 to the large house. In 1933, $899.56 and $1,779.11 was paid as rent. In 1934 the total rent paid was $1,491.60. In 1935, the total was $4,201.97. Books were so kept that the rent covered all expenses of repairs to the building, taxes, insurance, etc., and we have no expense item set up covering these outlays.

In 1935, we had approximately forty common laborers. The warehouse was open twenty-four hours a day including Sunday. We opened on August 1, 1935 and closed about a week after the other warehouses in that section closed. Our crop ran a little late, but we most always do that. We do our best to stay open until every farmer's tobacco is sold regardless of how late it is, but as long as we have tobacco the buyers will stay there and buy it.

[fol. 528] The closing of markets is brought about by the board of trade which is composed of the warehousemen and the buyers for each county. We are all allowed a representative, each warehouse and then the buyers. They decide when will be the most logical time to close and generally make an announcement of the closing date one week ahead.

Every year we lose at least $100 in stolen tobacco.

The exchange rate in Georgia varies according to the trade the warehouseman can make with his banker. Our exchange rate on deposits is ⅛ of 1% and we have paid 8% for borrowed money.

[fol. 529] I have worked in the North Carolina markets in 1931 and 1932. From my experience it costs more to operate a warehouse in Georgia than it does in North Carolina. We used borrowed capital—in 1931, $80,000.00; 1932, $40,000.00; 1933, $45,700.00; 1934, $37,500.00; 1935, $74,200.00. I have had no farmers complain of the charges to me. If the charges are reduced, we can survive, but we can survive only on a basis that would be obnoxious to the people of Georgia and the farmers of Georgia, and would affect our help and service and business materially. We could not hire the necessary help to give high class service.

Cross-examination:

The payments made as expense entries to the partners, covered their expenses also. All of us devoted our time to the business. The expenses per 100 pounds in Georgia are more than they are in North Carolina. We paid eight per cent interest on borrowed money and one-half of one per cent exchange in 1931. We paid the bookman $500.00. Our season lasted six to seven weeks. We also paid

Clip man	$350.00
Extra bookman and clip man	450.00
Auctioneer	1,300.00
Assistant Auctioneer	375.00
Ticket Marker	300.00
Floor Manager	300.00
Floor Manager	100.00
Check out man	100.00
Pay off man and Bookkeeper	500.00
Demonstrator, Solicitor and Floor man	175.00
Demonstrator	32.70
Demonstrator and floor manager	400.00
Partner, Mr. Easley	1,500.00
(Mr. Easley left before we closed that year)	
I was paid	875.00
(Mr. Easley had 15% in the business and I had 25%.)	

All of these men were from outside of Georgia. After the 1931 season closed in Georgia, I went to Rocky Mount, N. C., and then on to Danville, Ky., working in a warehouse. I was paid $50.00 per week. I was gone until the middle of February. I received $35.00 per week in Kentucky from Thanksgiving on.

[fol. 530] In 1931 two partners received 15% apiece; one received 20%; while my Father and I received 25% apiece, based on our relative interest in the property.

In 1931, we showed

Leaf Account profit	$447.86
Sale of Floor Sweepings	1,167.11
Basket Rental	365.89

Making a total income for 1931 of $15,418.05. Rent for that year for the two houses was $7,000.00. Among the expenses for 1931 are:

Long and Short Account	$179.70
Interest and Exchange	580.25
Hauling	445.65
Insurance	26.00
Labor	794.55
Office Supplies and Printing	175.50
Posting and Advertising	190.05
Advertising	204.23
Lights, Water and Telephone	101.23
Miscellaneous Expense	232.34
Hardware and Scale Repair	88.51
Bad Accounts and Nested Tobacco	84.23

In 1931 we had a net loss of $2,741.95, which is an actual loss of money. In 1929 and 1930, our profits were surprisingly small. In other words, in 1935 was one of the few real profits we ever made. Through the years 1931 to 1935, our operations would not show much profit if we made a fair charge for our services in carrying on the business.

1932 operations show salary account for me and Mr. Easley of $1,666.37. The auctioneer got $533.33. We had a contract with him and had to pay him although 1932 was a very small year. In 1933 we received $14,005.02. $1,700.00 was paid to the partners that year, and with that charged in as expenses, our net profits were $4,758.91. Rent for the two houses was $1,779.11 and $889.56.

In 1934, the salaries paid to partners were W. M. Boland $750.00, myself $750.00 and W. L. Brown $250.00. Profits for that year were $2,721.87.

[fol. 531] In 1935, we handled about 3,100,000 pounds of tobacco. In 1929 we handled 6,000,000 pounds, but our profit that year was surprisingly small. We paid $2801.18 rent for one house and $1400.79 for another house, or a total of $4201.97 rental for both houses. We deposited with the registry of the court $4726.99. Our total income for 1935 was $28,082.94, and subtracting the total expenses, we have a net profit of $8905.97, not including the amount deposited with the court. If we win the case our net profit for 1935 will be $13,634.96. The only partner to draw a salary in 1935 was Mr. Boland, who drew $1,000.

As to whether all five partners devote their entire time to the warehouse operations during the tobacco warehouse season, Mr. J. B. O'Connor was not there all of the time and

the reason two of the partners drew salaries is that they bore the burden of the work.

We paid A. J. Herren, bookman, $500 for four weeks work in 1931. He was not there the entire season. We stayed open six or seven weeks in 1931.

In addition to the amount shown on the statement of expense, J. E. Hughes and Mr. Weiler received $410. I don't know just how the amount was divided between them.

In 1932 the houses used for tobacco warehouse purposes had cotton stored in them. I don't think there was anything stored in them in 1931. There could have been, but don't think there was.

In 1931 Mr. Easley operated a warehouse at Rocky Mount, N. C. after the Georgia season. The market there ran until something after Christmas.

E. L. Meadows did the major part of the financing for us. He borrowed $80,000 and our note was not acceptable without the endorsement of E. L. Meadows and J. B. O'Connor. In addition to assistance in financing, Mr. E. L. Meadows, who is my father, rode the country practically every afternoon after the market opened and solicited to-
[fol. 532] bacco during the market. In 1931 he was a general trader and was a man of considerable capital and assets. He had an interest in the naval stores business. He handled cotton and bought it for speculation. As to Mr. O'Connor he had our general welfare at heart. He was in business with other lines, of course, but put in some time with us and applied to our interests as much as possible. He was also a general trader and engaged in the farming and naval stores business and he had a business at Claxton and he was in other businesses.

As to Mr. Brown, he solicited during the market and came over to the market every day of the season and assisted in managing the floor. As to any other business, he was engaged in general farming.

In 1931 our profit on floor sweepings was $1167.11.

The item of $445.65 designated as hauling in the expense statement of 1931 represents the amount we paid to trucks that went out and brought tobacco to our warehouse. I don't think the practice of the warehousemen with reference to rendering that additional service has been discontinued. As to whether or not we followed that practice in 1935, will say I don't want to answer that question—it would incriminate me and I decline to answer the question

for that reason. Such an item as that might be hidden in some other item. There is an item in the statement of $232.34 designated miscellaneous expense but I don't know what that was for.

From the years 1931 to 1935, our operations at Vidalia do not show a net loss. They are a loss from the standpoint if our services are included and what I mean is that it does not show an actual net loss but it also does not show any compensation for me and the others for the services rendered at what I think it ought to be worth.

1932 possibly was the smallest year that Georgia has had in the tobacco business in some years at least. It was the year 1931 that we had such a dry year and short crop around Vidalia.

[fol. 533] The opening of the market in Georgia is fixed by the buyers largely and the time is determined in order that they may get back to North Carolina and to the other markets, although they are willing to leave the buyers on one or two of the larger markets after the Georgia market closes, if it is absolutely necessary. They are hurrying to get up to one or two of the markets in North Carolina.

I don't know how the warehouse charges are fixed. Certainly they had to have some agreement on it at some time in order to avoid confusion and some uniform rate. So far as I know, other than the first agreement, the law of competition has governed the warehouse charges in Georgia. I have no agreement with any one.

Redirect examination:

The general rents of warehouses are based on $1.25 to $1.50 per 1000 pounds of tobacco sold. Since 1930 we have tried to hire experienced warehousemen to work for us and they want around $3,000 per season salary. Every item of expense set up was actually paid and was a proper and necessary charge in the operation of the business.

Recross-examination:

I think it would take two experienced warehousemen to run our business and they would be worth $3,000 a piece considering the size of our business. Most of the tobacco buyers who come to Georgia are from North Carolina, Virginia, Tennessee and Kentucky. I have never had an agreement with any warehouse with reference to charges.

Redirect examination:

I have tried to employ Georgia help, but it has not been satisfactory. My reason for going to North Carolina and Kentucky was to gain experience rather than the salary I earned.

Recross-examination:

My first undertaking with tobacco warehousing was when I was fourteen years old. I am twenty-six now. I a*n* m*o*t experienced enough to run the sale in or out, but I worked everything generally there.

[fol. 534] Redirect examination:

Every sale of every basket of tobacco is a separate transaction. I know of no expert auctioneer who lives in Georgia. They are all employed long in advance of the tobacco season.

W. F. Boggan (R. page 921-950) testified as follows:

I live in Hahira, Georgia, and I am a farmer. I have been employed and associated in the tobacco warehouse for one year, 1935. I was assistant bookkeeper for the Hahira Warehouse, operated by Dr. J. R. Smith. He owns the warehouse and paid $5,000.00 for it. He does not own the land on which it is located but rents it from the railroad. I have the books of the warehouse for 1935. We sold 927,300 pounds of first sales and resales.

The total commission received was $8,351.50 with $1,361.25 paid into the registry of the court. We had expenses of $7,678.60, not including the amount paid into the court. We had a loss of $700.45. If we win this case and the money paid into the court is returned we will have a profit of $660.80. Among our expenses are no payments to Dr. Smith, for his services, skill and experience in handling the business. I have not charged any rental into the expenses but Dr. Smith states that a fair rental would be $1.00 per 1,000 pounds first hand sales. There is an item of $125.00 rental for the land paid to the railroad. The total rent is $250.00 per year. $125.00 is still due to the Georgia, Southern & Florida Railroad.

Dr. Smith borrowed $30,000.00 to operate the business, paying interest. Dr. Smith devoted time to the business. He had his medical practice, but he spent as much time as possible and a great deal of time at night. He hired experienced men to carry on the business. H. H. "Pep" Powell was Sales Manager, Mr. Howell was Floor Manager, and Mr. Hall from North Carolina was Auctioneer.

[fol. 535] Cross-examination:

I was assistant bookkeeper. Mr. Merwin was bookkeeper. Dr. Smith does not operate a warehouse in North Carolina. There are three warehouses at Hahira. Hahira is twelve miles from Vidalia, and the same distance from Adel. The Farmers' Independent Warehouse handled the largest tonnage in 1935, selling a little over a million pounds. Three warehouses have been operated in Hahira ever since I have been there.

Our leaf account shows a loss of $47.67, which includes the sweepings, as well as the resales. The market lasted about nineteen days. The expenses charged in the operation of the warehouse are:

General Expense, gas and oil for drumming, tobacco, etc.		$1,127.44
(That includes general items, contributions to the school, repairs to automobiles, repairs to warehouses, Warehouse Association dues, repairs to scales, etc.) Lights, advertising, insurance, etc.		
Salaries, including drumming tobacco		4,231.28
This includes:		
Calculator	$100.00	
Solicitor	325.00	
Another Solicitor	165.00	
Bookkeeper	166.67	
Solicitor	200.00	
Leaf Account man	91.87	
Solicitor	175.00	
Sales Manager	900.00	
(He also solicited tobacco and ran the sale.)		
Floor Manager	91.00	
Auctioneer	400.00	

Floor man	60.00
Clip man	150.00
Weighman	48.00
Solicitor	80.75
Ticket Marker	
Calculator	30.00
Bookman (this man worked in 2 warehouses)	100.00
Solicitor	179.00
Check out man	30.00
Ticket Marker	75.00
Check out man	75.00
Solicitor and weighman	301.50
Assistant Bookkeeper	150.00
Solicitor and Assistant in Warehouse	125.00
These salaries total	$4,231.28

[fol. 536] This was my first experience in the tobacco warehouse busines. W. M. Merwin was the regular bookkeeper. He resided at Hahira but he has now gone up into the tobacco belt that is at Washington, N. C. 'Dr. Smith does not operate there. Mr. Merwin has gone up with some one else.

We lost some sales of tobacco at our warehouse at the beginning of the season due to the fact that we had no board of trade and the first sale was conducted in our warehouse. They cleaned out our warehouse the first day and then had to sell out the tobacco in the other two warehouses before they returned to our warehouse, and the growers realizing that there would be a delay in a sale at our house placed tobacco with the other warehouses in order that it might be sold sooner.

The item of $1,127.41 does not include any salaries but does include contributions to the Hahira Board of Trade, a wreath of flowers purchased for a funeral, a doctor's bill for setting a broken leg of one of the employees and the expense of a banquet held at the Daniel Ashley Hotel, in addition to contribution to schools, repairs to automobiles, repairs to warehouse, warehouse association dues, lights, advertising, insurance, etc.

Our sales manager, P. E. Powell, who resided at Valdosta, Georgia, and he received a salary of $900. He

began work sometime in May drumming tobacco and drummed tobacco until the market opened and handled the sales after the market opened.

The auctioneer was O. F. Hall and received $400. He was there 18 days and then rushed up to North Carolina to get on the market there. He left the last sale an- we had to get another auctioneer for the last sale. LeRoy Stalvey received $301.50. He drummed tobacco from June 1st until the market opened, and after the market opened, had charge of the scales and all the weighing. The total amount paid to solicitors was $2,470 and some odd cents, but two [fol. 537] of those so employed worked in other capacities, namely Mr. Powell and Mr. Stalvey. This amount was spent as the result of the inexperience and due to competition that existed between the warehouses.

Dr. Smith was a practicing physician and during the marketing season was actively engaged in his profession.

We made approximately $400 profit on the floor sweepings.

[fol. 538] We had mostly local men employed. Dr. Smith had only run a warehouse one year, and he spent a lot of money for solicitors. He was taking over this warehouse. I think it was inexperience as much as anything else that caused him to pay so much for solicitors. He did not realize how much money he was spending.

Labor to handle the leaf	$162.40
Common labor	920.75
Leaf account loss	40.67
Long and Short Account	61.23
(This represents the deduction by the company for short tobacco.)	
Interest and Exchange	1002.86
Rent to the Railroad for Land	125.00

I have not charged $821.00 rent on the warehouse, which Dr. Smith thinks he is entitled to.

Redirect examination:

I did not think the scale of charges reasonable until I worked in a warehouse and found out something about the business. I see now that the warehousemen do not get rich. There is no item of taxes charged in the expenses.

Recross-examination:

I think a Sales Manager is a responsible job, and a man must know tobacco to run the sales successfully. You should have as good a man as you can get.

Redirect examination:

A Sales Manager is necessary to operate the business. He must start the bidding, try to get the farmers as near the market price for his tobacco as possible. The reason Mr. Powell lost money was that he had to sell the house tobacco on the last day of the sale. The market was so rushed.

Recross-examination:

I cannot give the amount the sweepings sold for. The loss on resales was more than $40.00 because we credited the account with the sweepings.

Redirect examination:

Every item of expense was actually paid and incurred during the operation of the business.

[fol. 539] J. H. McLean testified as follows:

I live at Douglas, Ga. and am a tobacco warehouseman. I have been in the tobacco business since I was eighteen years old, and have been in Douglas since 1919. I used to operate a tobacco warehouse in Rocky Mount, N. C. We operated under the name of Growers Warehouse, a partnership of myself and Mr. George. We have operated this warehouse since 1923. I have my books for 1933 and 1935 here. We did not operate in 1934 individually, but Mr. House can give the results of that year's operations.

In 1935, we had a little profit. We sold something like 1,600,000 pounds. Our total income was $15,425.24. Total expenses charged $10,880.25, leaving a profit of $4,544.99. Included as expense was the amount deposited in the registry of the Court, $2205.81. If we win the case, our total profit will be $6750.80.

We own our warehouse. It is approximately 48,000 square feet. It cost us approximately $30,000.00. We have

made some additions to it. In 1935 we used $6,000 cash as capital. This was margin for our bank account where we borrowed $40,000. We have an item of $1,000 for taxes, which includes some back taxes. We have depreciation charged. A warehouse in Douglas, the same size as ours rents for $3500 per season. We do not get any rent from our warehouse during the rest of the year.

All items of expense were necessary and actual expenses paid in the operation of the business.

From my own knowledge, our 1934 operations resulted in a loss. In 1933, we had a gross income of $9,025.19 and a total expense of $7435.67, resulting in a profit of $1589.52, to be divided between two partners. No item of expense represents any payment to a partner for his time, skill and services. All items of expense were necessary and actual charges in the operation of the warehouse. Our books for 1932 and previous thereto have been stolen. Only 1926 and [fol. 540] 1927 books are available. In 1932 we had a loss. We did not do much business and did not have much expense. We had a profit in 1931 as I recall. Likewise in 1930.

Cross-examination:

The years 1919 to 1929 in most cases were profitable. We had a year or two that were not profitable. In 1935 miscellaneous expense was $3315.56, that includes insurance, interest and exchange, gasoline and oil, tobacco association dues, advertising, license taxes, tobacco sheets, supplies and taxes.

Our salaries totalled	$3486.60
Ticket Marker	35.00
(He worked for other houses in Douglas.)	
Two check out boys	11.25 each
Auctioneer (on account of salary)	200.00
(Mr. Squires, the Auctioneer, drew in all $400.00. He was from Kentucky.)	
Solicitor and floor man	280.00
Floor man	60.00
Solicitor and floor man	130.00

We had five solicitors. Partners did not charge anything as an expense item for their services soliciting or otherwise. We have no rent item charged. No depreciation charged.

Under the old scale of charges, our total profit would be $6758.80. We had a profit on our leaf account of $463.09. Our leaf account and sweepings were not handled in the same account.

We sold the sweepings for	$348.23
Basket Rental	146.00

There were five tobacco warehouses in Douglas. Two of them were used for cotton storage. Our warehouse has not been so used. Hazelhurst, the nearest tobacco warehouse to Douglas, is 32 miles; Waycross is 52 miles; Baxley about 40 miles and Nashville about 40 miles.

In 1934, the warehouses pooled their operations at Douglas, and our house was closed. Only three warehouses operated that year. The brick warehouse and the Farmers' Brick Warehouse were closed that year. We paid $3500.00 for the brick warehouse in 1934 to keep it closed. We did not receive anything except our share of the profits from the operation of the other warehouses.

[fol. 541] In 1933, we would have had a loss were taxes charged for that year. In 1933 we had a gross income of $9,025.19. Our total expense was $7,435.67, which would leave a net profit of $1,589.52, but we did not pay or charge any taxes for that year. We did not have a separate auctioneer. Three were hired to operate the five warehouses. We did not charge any rental expense for that year.

Up to 1929 the tobacco business was all right. From 1930 through 1934 were years of depression. They were bad years in the tobacco business. Don't know of any business that was prosperous during those years. In some of those years climatic conditions were bad. We had the smallest crop in 1932 we have ever had since the beginning of the industry. That was due to blue mold in the plants.

Mr. George and I did not charge a salary for our services. The only charge in the expense account to us was our actual expenses plus the gasoline and oil. No depreciation on our cars was charged.

I guess the tobacco warehouse business is overcrowded in my section or community. The warehousemen think there are too many.

About seven and one half million pounds were sold on the Douglas market this year. Three warehouses could have handled it very efficiently. There are seven two-sales

markets in Georgia and the rest are one-sale markets. Three large warehouses can easily handle seven or eight million pounds of tobacco on a market with two sets of buyers.

I devote about four and one half months in each year to the tobacco warehouse business, beginning about the time the crop is planted in April.

Redirect examination:

There is no way the warehousement can keep a new warehouse from opening at any market. We have no control over the number of markets. We devote about four and a half months to our business each year. We hire experienced help. Mr. George is Sales-Manager, and I am his assistant to conduct the sales.

[fol. 542] Recross examination:

In my opinion the far-ers hurry the market. I think they would sell all of their tobacco the first day if they could get it on the market. We stay in Georgia as long as necessary. I do not think the hurrying of the sales is stimulated by the warehousemen and the buyers. I do not think we have had the same scale of charges in Georgia since 1919. The Tobacco Warehouse Association did not make the change. I am a member of the Association.

The idea that the North Carolina markets open early in September and that the warehousement and buyers want to get up there might have some effect on the marketing season in Georgia.

I don't think the warehouses charges have been the same all the time since I have been in the tobacco business in Georgia. There were different scales. I don't know how they figured. There was no association in 1919. The scale of charges at one time was different from the present scale and I don't know whether the tobacco warehouse association made the change or not. As to whether I was present when the association passed a resolution fixing the scale of charges, will state I was present but this scale was in effect at that time. I remember when the resolution was passed, but I don't think I was present. I do not know the year the resolution was passed.

H. STANLEY BLAKE testified as follows:

I live at Carlisle, Ky. I have been in the tobacco warehouse business off and on for nineteen years. I operate at Moultrie, Ga. Cynthiana, Ky. and New Bern, N. C. My Georgia business is a corporation—Blake's Tobacco Warehouse, Inc. The corporation has been in existence three years. Mr. Webb is President, Mr. Phillips, Secretary and Treasurer, Mr. Fred Alverson, Manager. I was sales-manager in 1935 and President until that year.

We sold close to 800,000 pounds of tobacco in 1935. Our net profit was around $1700.00. It is just the amount we [fol. 543] have deposited in the registry of the Court.

In 1934, our gross receipts were $8,170.46.

General expense	$2,595.40
Salaries	4,195.00
Rent	1,350.00

Showing a net loss of $30.00 for 1934.

For 1933, our gross receipts were $8,544.48. The expenses and salaries around $8,000.00 and rent of $1350.00, making a net loss of $805.52. These are the years in which the corporation operated. I drew a salary of $500.00 each year, that was my salary as an officer of the corporation. No dividends having been declared on stock for 1930, 1931 or 1932.

I operated individually for the first two years, as the New Moultrie Warehouse, which I owned. It burned and in 1932 I operated individually as Blake's Warehouse. The corporation heretofore testified about leased the warehouse at a flat rental of $1350.00. It has approximately 15,000 square feet.

I individually leased a warehouse in 1932. The gross receipts were around $1500.00 and expenses $800.00—salaries $1600.00 and although we had the blue mold during that year, which ruined the tobacco plants, my rent was reduced to $250.00. The operation was a complete failure, and I lost about $750.00. I got no salary that year, and I cut expenses all I could.

In 1931, my warehouse burned about the middle of the market. Up to that time my gross receipts were $6800.00. My general expense $3800.00, salaries $4,000.00 and rent $3500.00. My net loss was around $4500.00. I figure my entire loss that year was $19,700.00. I leased the warehouse

that year for $5,000.00, but they rebated me $1,500.00 which reduced it to $3500.00.

1930 was my first year in Moultrie. My gross receipts were $13,500.00. General expenses $5,000.00, salaries $4,000.00, rent $5,000.00, or a net loss of around $500.00. [fol. 544] I did not operate a warehouse prior to that time. Capital stock of the corporation was $5000.00, reduced to $4000.00 this year. We borrowed around $25,000.00.

Cross-examination:

The solicitors' salaries are included in the salary account. Anybody earning under $25.00 was included in the labor account, which is under general expense. I paid solicitors as high as $500.00 for the season—some around $100.00. We formed a corporation in order to have stockholders who would solicit tobacco.

In 1930, I imagine we spent $1500.00 for solicitors, $1000.00 for auctioneer's salary, and the book-eepers, I think, were paid $500.00. I do not think you could rent my warehouse for $1750.00. If I had had no solicitors I would have eliminated about half of my gross receipts. I do not know that the Tobacco Warehouse Association passed a resolution agreeing to a uniform scale of charges. The charges are just customary charges. Until this year, when the new law came in, solicitors were hired at every place I have worked.

I made $2400.00 for three months work in Kentucky, all the time I was working men in Georgia.

In 1935, I drew a salary of $500.00; Mrs. Blake drew $300.00; Phillips got $400.00, and Alverson $400.00; Webb received $150.00. In 1934 I received $500.00; Mrs. Blake $750.00. Outside of the salaries for 1935, our profit depends on whether we get the money deposited in the Court back, $1577.94.

I am not in position to break down these statements of gross receipts, expense, salaries and rent that I have testified about or give the items constituting the account. I probably can get them for you but I cannot now. (P. 982.)

All the other stockholders of Blake's Tobacco Warehouse, Inc., were employed by the corporation during the season. (P. 982).

[fol. 545] In 1930 the payroll probably includes $2500.00 or $3000.00 which was paid farmers for their influence.

On the basis of ten cents per hundred pounds of tobacco sold, my rent would be $1750.00, but I cannot say that is a normal, reasonable rent on my warehouse on the customary basis in Georgia. I know I paid too much, but I cannot help that. As to whether $5000.00 rent is excessive, it was, but the same house rented for that and last year rented for $5500.00, I am told. You may consider it excessive and do not thing it ought to get that much rent, but when I quit they were still paying that and they are getting that this year again. I could not rent one of these for less than $3500.00 this year and one got $5500.00 I am told. $1750.00 is not a normal reasonable rent on my house. If this case is won, the amount of income for 1935 will constitute approximately 33⅓ per cent. of my capital investment of $4000.00, in addition to salaries paid the stockholders for work during the season.

I leave the Georgia market and go first to the North Carolina market and then to the Kentucky market.

H. W. WINSTEAD testified as follows:

I live in Roxboro, N. C. I am in the tobacco business, farmer, merchant, and dealer in some real estate. I have been in the tobacco business since I left college in 1904. I have been in the tobacco warehouse business for twenty-seven or twenty-eight years in Tifton, Ga., and Danville, Va. At Tifton I operate the Twin Brick Warehouse. It is owned by the [fol. 546] Tifton Investment Company, a corporation. I am not an officer in the corporation, but I am a stockholder. I am Sales Manager of the warehouse, have the right to hire and discharge and I look after the warehouse.

I have been in Tifton, Ga., eleven years in the same warehouse. The Tifton Investment Company had an old warehouse called The Old Banner. They built a new one, called the New Brick. I operated the New Brick for the first two years, after that I operated The Banner and the New Brick together and called the two warehouses, the Twin-Brick. The Farmers' Warehouse is also owned by the corporation, but operated by Mr. Jeffries. The two operations are distinct. I operated mine separately.

I work on a salary and commission. I am familiar with the books. We sold in 1935 gross first sales and resales over 3,000,000 pounds. This is one of the largest of the

warehouses. The two buildings having approximately 60,000 square feet. They are operated exactly like they were the same warehouse.

The commissions for 1935 were $27,903.42. The gross expenses charged were $17,185.23, leaving a net profit of $7,172.28. The leaf account resulted in a loss of $2,140.97. The expenses have been itemized into groups, salaries, insurance, advertising, postage, labor, etc. Everyone we paid under $100.00 was put in our labor account. I drew the highest salary which was $3,000.00, my assistant drew $840.00, the auctioneer $800.00.

We worked three shifts of common laborers, and at the busiest time had as many as 15 in a shift during the twenty-four hours, then we would employ as many as forty-five common laborers.

In 1934, we sold approximately 2,000,000 pounds of tobacco. The gross income was $20,437.24. Basket rental $184.33. Loss on leaf account was $615.33. Gross expenses for 1934 were $15,204.62. Operation profit $4904.99. I worked in the same capacity this year as in 1935. My salary and commission amounted to $3122.46.

[fol. 547] In 1933, we sold around 2,500,000 pounds of tobacco. Our commissions were $25,698.67. Basket rental $152.47; loss on leaf account $162.75. Total expenses $15,614.03. Net profit $8879.57. I drew a salary and commission for my services in 1933. The auctioneer was paid that year $1043.51.

In 1932, we sold around 1,000,000 pounds. Our commissions that year were only $6799.98. Basket Rental $84.28. We had a profit on our leaf account of $321.24. The gross expenses for 1932 were $8367.52. We had an operating loss of $1641.29. My salary was only $1107.45. The auctioneer was paid $775.00.

In 1931, I think we sold just a little less than 2,000,000 pounds. Our gross commissions were $19,828.70. Basket rental $351.14. Loss on leaf account $796.98. Total expenses $16,484.68. A net profit of $2077.37. My salary was $3932.67. The auctioneer's salary was $1,000.00.

In 1930, we sold approximately 4,000,000 pounds. Our commissions were $27,458.82. Basket rental $94.57. Our leaf account showed a profit of $1220.70. The total income was $28,809.09. Total expense $16,238.36, leaving a profit of $9040.26. Long and Short account that year was $2418.46.

That represents the deductions made by the company in final settlement for lost tobacco.

The two warehouses are owned by the Tifton Investment Company but no item of rental is charged. There is a depreciation taken as an expense. On the building it is 2%, equipment 10%, furniture and fixtures 10%. They value the land at $10,401.12. The warehouse buildings are valued at $62,760.72. The equipment is valued at $6616.22 and furniture and fixtures at $784.46, making a total investment of $80,562.52.

We require about $50,000.00 each year for cash capital. It is mostly borrowed. Sometimes we pay out in one day as much as $100,000.00. Interest and exchange for 1935 [fol. 548] amounted to $1676.11. The books for my warehouse are kept separate from the other warehouses of Tifton Investment Company.

In 1935, we paid into the registry of the court between $4,000.00 and $5,000.00. I received dividends on my stock in the Tifton Investment Company about half of the years I have owned it.

This paper you hand me (complainant's Exhibit #2) is a copy of an auditor's report, prepared for Twin-Brick Warehouse by Harvey H. Hunt & Company, Certified Public Accountants, which I identify.

Cross-examination:

I am hired by the Tifton Investment Company, and the warehouse is operated in their name by me. The corporation gets the profits or stands the loss. I do not have any statements of the operation prior to 1930. I think we have made some profit in every year except 1932.

I own $1,000.00 in stock of Tifton Investment Company.

In 1935, I paid my son $300.00, who was in charge of the leaf account. He had had five years experience, and did not have entire charge.

Weighman	$250.00
Solicitor and helper in the warehouse, who drove his own automobile	230.00
Floor Manager, in charge of labor	300.00
Ticket Marker	200.00
Asst. Sales Manager and Solicitor	840.00
Calculator	467.00
Asst. Calculator	190.00
Auctioneer	800.00

Auctioneer's salaries vary. You have to pay according to the demand for them and contract ahead of time.

Asst. Night Manager	150.00
Night Floor Manager	200.00
Solicitor and Floor Man	150.00
Floor Man	140.00
Floor Man	100.00
Solicitor and Floor Man	125.00
Clerk	100.00
Clerk	100.00
Solicitor	100.00
Solicitor	100.00
Weighing Clerk	100.00

Most of my employees are local men, except the auctioneer, book and clip men. My salary is $1500.00 plus $750.00 [fol. 549] per million pounds of tobacco sold. In 1932, I voluntarily cut my salary. In 1934, we paid the auctioneer $662.75.

Man in charge of leaf account	$300.00
Clerk	298.87
Floor Manager	210.00
Weighman	210.00
Asst. Floor Manager	210.00
Solicitor	205.00
Solicitor, Asst. Floor man and Asst. weighman	200.00
Asst. Night Floor Manager	220.00
Clerk	106.50
Clerk	105.00
Weigh Clerk	100.00

My solicitors are paid around $200 each, but they do some work in the warehouse after the sale begins. I solicit a great deal myself. I ride the country for two months prior to the season.

Long and Short Account	426.80

There is no uniformity in salaries from year to year, but different contract- are made each year. I try to hire my help as cheaply each year as possible.

My tobacco warehouse at Danville, takes six to seven months of my time each year. My farming business is in North Carolina and it gets what time I have over. My mer-

cantile business is at Roxboro, N. C. but I have a manager there and do not give that any of my time. Real estate is just a side line. I own between 3000 and 4000 acres of farm land.

In addition to the commission of $27,903.43 as shown for 1935 we received income from the rent of our baskets to the buyers.

As to what the twin brick warehouses are used for during the off tobacco season, will state I am not down there. I have gone down there some years and seen cotton in them, but don't know whether they were used every year for that or not. I have seen a little fertilizer down there but didn't know to what extent they are used for that purpose. I saw some corn in the warehouse one year but saw it there only one year.

[fol. 550] We usually run the warehouse for the sale of tobacco about one month. The 2% charged for depreciation is the estimated annual depreciation.

As to why I justify carrying the building at 100% on the books, when a depreciation of 2% annually has been charged on one building built in 1923 and the same amount on the other building built in 1925, will say I haven't any answer.

Taxes listed against the building cover all the taxes against them for the particular years.

I don't know whether the amount deposited in the registry of the court is included in the $7,172.28 or not, and, if not, the amount so deposited should be added to that sum.

E. P. Bowen is President of the Tifton Investment Co. and is also President of the Bank of Tifton, with whom our banking arrangements are made.

With reference to the tobacco bought by the warehousemen at any time during the season we have the privilege of reselling at any time we see fit. I could put it back on my own floor any day I get a sale but if the floor is crowded with farmers' tobacco we do not put out our own tobacco for sale.

In the amount on which depreciation is charged there is listed the buildings and lands and equipment and fixtures.

Redirect examination:

The manager of our leaf account has nothing to do with buying the leaf. He merely regrades it and reworks it for resale at the first opportunity. I cannot sell our purchase

where the floor is crowded with farmers' tobacco. I keep the warehouse tobacco out so that the farmers may have first chance.

Recross-examination:

Depreciation is charged on same value or investment each year.

[fol. 551] W. M. Talley (R. page 1049-1077) testified as follows:

I live at Fuquia Springs, N. C. I have operated a tobacco warehouse since 1919. Prior to that time I was a buyer. I operated in 1935 at Nashville, Ga., as Union Warehouse. I had one partner, Mr. Talley, who is my brother. My first year at Nashville was in 1927.

I have my books covering my operations except for 1930, 1931, 1932 and 1933, which were misplaced, but I have statements of operations for these years. We leased our warehouse at Nashville, on a tonnage basis and a percentage of the profits.

We sold in 1935, 2,299,481 pounds. Gross commissions were $22,980.77. Profit on leaf account $3641.53. Amount deposited with the registry of the court $3966.25. Total expenses $15,652.86, leaving a profit of $7003.19, less a long and short account of $374.83, which reduced the profit to $6616.45. If we win the case and the deposit with the court is returned our profit will be increased over $9000.00. In 1935, we paid rent of $5130.04. We have not set up in the expense account any payment to either of the partners for any of their services. I was General Manager, and ran the sale. My brother, the other partner, was the auctioneer.

We were in Georgia approximately three months. We have three other brothers who worked with us. The three brothers solicited the tobacco with the partners and helped on the floor. We had four bookkeepers. We had weighmen, book and clip men. Total expense account, salaries for book force, leaf man, floor manager $4654.95. Common labor $1870.99. We used anywhere from 18 to 25 common laborers.

In 1934, income from commission $15,643.61. Total expense $11,219.21. Net profit $5123.36, to be divided between

the two partners. In 1933, we had a profit of $3690.00. In 1932, we lost $3500.00. In 1931, we lost $87.93. In 1930, we had a total profit of $9902.23. From 1930 to 1933, Mr. C. H. Cozart was a partner with us. Three of us divided the profits or losses.

[fol. 552] During these years our rent for the warehouse was $6,000 per year. For the past four or five years, we have borrowed from $10,000 to $20,000 each year to operate on. In 1935, we paid exchange of $1108.35 and interest of $63.37. Our warehouse has between 60,000 and 70,000 square feet of floor space.

Cross-examination:

In 193-, we sold around 2,000,000 pounds. In 1932, about 500,000 pounds. In 1933 between 1,000,000 and 2,000,000 pounds: 1934, 1,500,000 pounds and 1935, 2,200,000 odd pounds. During these years the average rental on the warehouse was between $5,000 and $5,500.

I have operated in Georgia only since 1927. I made a profit that year of approximately $2500. In 1928, I operated at Adel, Ga., and we made a small profit around $1300. In 1929, I think we made a profit. In 1930, we had a profit of approximately $9,000. My 1929 profits might have been $7,000 or $8,000. We did not charge any expense to the business for the partners' time and services, neither were their expenses charged to the business. My leaf account generally shows very little profit or loss. I hire as many local men as possible.

We had an auctioneer we paid $225. My brother sold 90% of the tobacco. My brothers drew salaries of $648.73. $800 and $180. The two drawing the larger salaries rode the country with me, they only worked during the tobacco season, and was not in Georgia as long as we were.

I have forgotten the exact amount I paid our brothers for services rendered by them in 1935. I think we paid Arthur a right good salary because he was right down there with us—helped us work the country.

We have no books for 1933 and can't tell what we took in or what we spent.

[fol. 553] Our warehouse at Nashville was rented fully equipped.

In 1930 the tonnage sold was something over four million pounds.

The rental charge which we pay for warehouses in Georgia I consider out of line with the usual rental elsewhere according to the tonnage. In my opinion the warehouse in which we operate at Nashville is worth from $35,000 to $40,000. We use this warehouse at Nashville only from four to six weeks. I consider the rent a little high.

I have no investment made in the tobacco business in Georgia.

As to the salary allowed to myself and partner, the business was not charged with a salary, only with gas and oil when traveling for the company and drumming tobacco and soliciting.

I have no itemized statement of expenses for any year except 1935 and there is no way you can analyze how much salary or expense of any particular nature is included in the totals named.

In 1935 we had 14 out of state employees and 13 local employees. The outstanding employees naturally run up the expense and they follow the market into North Carolina.

Service rendered in visiting the farmer is really about 90% for solicitation purposes and 10% or smaller for the other purposes.

H. C. Hurdle testified as follows:

I live in Burlington, N. C. I operate a warehouse in Georgia, and have been connected with the business since 1925. It is called the Farmers' Independent Warehouse at Hahira, Ga. I operate individually although it was organized as a corporation. I personally own it now.

[fol. 554] In 1935, we sold in excess of 900,000 pounds. I deposited in the registry of the court $1225.60. We took in at the warehouse in 1935, $9033.83. Expenses were $6069.47—profit $2964.36.

Our bookkeeper was paid	$65.00
Bookman	250.00
Head Bookkeeper	250.00
Solicitor and floor man	260.00

He helped run the sale and solicited prior to the sale. I had two auctioneers and paid them $400.00 a piece. I have not set up an expense item for the warehouse rental, neither are there any tax items set up. We did not charge any de-

preciation. I took the warehouse over myself in 1929. It cost me about $14,000.00. It cost to build $17,000.00. I have my books for 1925 to 1930 inclusive. I had a partner in 1931. I did not operate in 1932—my warehouse stood vacant. I leased the warehouse in 1933 and had three partners in 1934. They paid me $1.00 per 1000 rent in 1933, which amounted to a little over $800.00.

In 1934, we had a loss of around $700.00. I lost in 1931 between $150.00 and $200.00. In 1929 and 1930, I think we had pretty good years. I made between $1200.00 and $1500.00 in 1930. I have never charged, in the years I operated the warehouse, any item for my skill or experience. I have borrowed at one time $60,000.00 to operate on, that was in 1935. We did not borrow that much in the other years. I have about $1500.00 invested in equipment, baskets, trucks, office furniture, etc.

Cross-examination:

Only one auctioneer worked at a time, the other helped on the sale when he was not auctioneering. One acted as sales manager, and I as his assistant.

I have operated a warehouse at Goldsboro and Durham, N. C. I paid the ticket marker $75.00. He marked tickets for all three houses.

[fol. 555]

Solicitor (he helped in the warehouse)	$250.00
"	150.00
"	250.00
"	250.00
"	200.00
"	200.00
Night watchman	25.00 a week.

Total expense was $6069.47. That includes all salaries and the deposit with the court. Total Commissions $9033.83.

There are three warehouses in Hahira. I am not employed now—have been unemployed since I left Georgia. I own a farm.

R. A. Hughes (R. page 1091-1123) testified as follows:

I live at Anderson, Ky. I have been in the tobacco warehouse business since 1918. I went to Georgia in 1926 at

Baxley. In 1935 I operated at Douglas, Ga., with the Soaper warehouse. It is a partnership—two partners besides myself. We lease our warehouse for $3000.00 a year. It contains approximately 50,000 square feet.

In 1935, we sold 1,828,304 pounds. I have the books for my operations at Baxley for 1930, 1931 and 1932, and for Douglas operations 1931 to 1935 inclusive.

In 1935, the gross income was $17,516.51. Commissions were $17,315.73. Basket rental $153.55. Profit on leaf account $16.37. Long and short account profit $21.82. Corrections $9.04. Total expense $11,116.65. Total profit, provided we get our deposit with the court back, $6399.66. $2825.35 is deposited with the court.

No expense has been set up showing payment to me or any of the partners for their time, skill, experience or expenses. My partners and I solicit before the market and during the season. I am payoff man and keep the books. Mr. Wilkins is Sales Manager, assisted by Mr. Soaper.

Total salaries in 1935 were $3041.00, not including common labor. Rent was $3,000.00.

In 1934, I had three partners, that was the year that the [fol. 556] warehouses in Douglas consolidated. There are five warehouses at Douglas, but only four were operating. We rented the fifth one and kept it closed. Each warehouse contributed $875.00 for rental on the closed warehouse, making a total of $3500.00. Three firms joined in the joint operations. Seven individuals made up the three firms, but each firm kept its own books. My firm made a profit of $2077.72.

In 1932, we also had a combine. The partners were different in that year. There were four warehouses that year and we closed one. My firm lost $2374.90 in 1932. No one of my partners nor myself received any salary.

In 1933, we made a profit of $1626.59. The necessary borrowed capital varied from year to year, from $20,000.00 to $40,000.00, but in some years on one day we would pay out as much as $75,000.00 to $100,000.00. These overdrafts bore interest just like borrowed money. We also paid exchange.

In 1931, we had a total loss of $3642.04. In 1930, a loss of $113.53. This warehouse was built in 1930. We were to put up $15,000.00, payable $3,000.00 a year.

At Baxley, we also ran a warehouse in 1930, 1931 and 1932.

We rented the warehouse there on a basis of 15 cents per 100 pounds. The profit was about $1500.00, divided between three partners.

We sold in 1930, 1,690,320 pounds of tobacco. We borrowed from the bank $12,500.00.

We lost in 1931, $1400.00. The warehouse was rented on the same basis with a minimum of $1500.00 guaranteed.

In 1932, we showed a loss of $897.68. Since 1932, the warehouse has been operated by Boyd Clark. In 1930, 1931 and 1932, I was at Baxley most of the time. I solicited tobacco for both houses. We hired men to run the sale.

At Douglas, we furnished the equipment for the warehouse, in which we invested around $3500.00. The equipment was furnished us at the warehouse at Baxley.

[fol. 557] Cross-examination:

I operated two warehouses in Kentucky. The season begins in Kentucky December 1st. The warehouse at Douglas is worth between $25,000.00 and $30,000.00. The warehouse at Baxley would be worth about $25,000.00. They are about the same size.

At Baxley we paid, for 1930, rental of $2421.55. In 1931, we paid a minimum rental of $1500.00. In 1932, we were supposed to pay $1500.00 but settled for $1,000.00.

At Baxley, there are three warehouses and five at Douglas. Baxley's best tonnage has been 3,500,000 pounds, while Douglas has sold 12,000,000 pounds.

1935 we paid Mr. Frederich $500.00 to run the sale.

Floor Manager and Trade man	$200.00
Floor man	100.00
Book man	250.00
Floor man and solicitor	240.00
Auctioneer	500.00
Office man	150.00

In 1934, we paid

Floor man	$241.00
Solicitor	125.00
Clip man	150.00
Bookman	35.00

(He worked at other warehouses also. This was probably less than one-third of his total salary.)

Ticket Marker	25.00
(On the same basis.)	
Check out man	25.00
Board of Trade	100.00
Floor Man and Trade man	127.50
Floor Man	125.00

These were for 1934, when all the warehouses in Douglas, operated as one unit.

In 1933, we paid

Floor Manager	$350.00
Scale Man	95.00

The salaries vary from year —, according to the work they did and the time they worked.

In 1933, in Douglas, we paid our auctioneer $375.00. We sold approximately 1,250,000 pounds.

[fol. 558] In 1934, we made $2077.72 in Douglas. In 1935, our profit, including the deposit in the court, was $6399.86.

I have charged the same scale of charges since 1926. There was no tobacco warehouse association then. As far as I know, we have charged the same gee as 1926.

In 1932, we sold only 250,000 pounds of tobacco. In 1930 was the first year we operated in Douglas and we had to go out and build up the trade and Mr. Sikes spent possibly some money he should not have spent. There were expenses that year that should not have been incurred. In 1935 our auctioneer handled the tonnage in our warehouse efficiently. In the year 1933, the partners in our business drew amounts as follows: R. A. Hughes, $1150; W. H. Soaper, $1149.80; J. P. Jewell, $491.66; S. F. Frederich, $392.77. I have $3500 invested in the warehouse business in Georgia.

Redirect examination:

A Board of Trade in a tobacco market is a supervisory agency that fixes the hours, length of sale and employes supervisors. The warehousemen and tobacco buyers contribute to that expense. They make the rules for running the market in every town.

JOHN S. BERNARD testified as follows:

I live in Greenville, Tenn. I have been in the tobacco business for thirty-two years, since I was 10 years old, with the exception of eight years, when I was with the American Tobacco Company. I have operated a tobacco warehouse in Georgia for the last eleven years.

In 1935, I operated the Red Warehouse at Douglas. We operated as a partnership, Bernard & Vann. We own our warehouse having bought it in 1926. It was valued at $34,000. In 1935, we sold approximately 1,750,000 pounds of tobacco. Gross commissions were $13,954.37, basket rental $139.05, collections from previous years $9.00, making the total of $14,102.42. We deposited in the registry of the [fol. 559] court $1896.28. Total expenses were $12,772.50, including as an expense the amount deposited with the Court. Our profit was $1326.90. If we lose this case and there is no refund, we will lose $569.38.

In 1935, total salaries were $2894.58. Neither of the partners drew any salaries for their time, skill and experience in carrying on the business. Common labor amounted to $1020.96.

[fol. 560] Ther other items of expense are interest, exchange, insurance, taxes, repairs, leaf losses, lost tobacco account, etc. There is no rental charged in the expense. The taxes are charged. We have set up a depreciation account at the rate of 10%. The figure for 1935 is $1250.00.

Cash capital was $9150.00. We borrowed $42,500.00, paying interest and exchange to the bank. I am Sales Manager at our house. I solicit tobacco prior to the selling season. Mr. Vann handles the floor and the leaf account. He also solicits prior to the season.

We operated in 1934 under the combine at Douglas, Ga., testified to by Mr. Hughes. Our pro-rata share of the gross receipts that year was $5500.00. Against that we charged:

Repairs	$246.00
Taxes	357.00
Insurance	288.00
Advances	33.40
Pro-rata rent on brick warehouse	875.00
Auto expense	300.00
Hotel bill for partners	280.00
Interest on investment	3000.00
Depreciation	1250.00

Making a total expense of $5631.01.

We had a profit on our leaf account of $1239.50, which added to our other income made a total of $6739.59. Deducting the expense from this income, we had a profit of $1108.58, which was divided two ways and represented all of the money the partners received for their work.

In 1933, our total commissions were $11,729.50, basket rental $43.04, making a total income of $11,772.54. The total expenses were $11,223.11, leaving a net profit of $549.43. We sold 1,272,000 pounds of tobacco. We were charged interest on our investment that year of $2,000.00. Depreciation $1250.00. A fair rental would be around $3600.00. I paid Mr. Milholland that amount for a warehouse of approximately the same size, if not smaller.

[fol. 561] 1932 was a disastrous year. We borrowed $20,000.00 and had a cash capital of $6,000.00. Total income of our warehouse was $728.00. Against that income we had expenses of $386.00, insurance $423.00, hotel bills of partners $250.00, operating two automobiles $200.00, interest on investment of $2,000.00. Depreciation $1250.00. Total expenses $4509.00. We had an actual loss in cash of $3781.00, without charging anything but the actual out of pocket expenses.

All of my records for operations from 1927 to 1932, inclusive, were destroyed by fire. In 1931, we did not make any money to speak of, I do not remember exactly. The Red Warehouse and the Growers Warehouse rented the Farmers Brick Warehouse from J. H. Milholland for three years for $4600.00 a year. In 1931 the Farmers Brick lost $3800.00, in 1932 it lost $5100.00, and in 1933 it lost $386.00. The Red Warehouse's part of the loss was $593.00, and expenses, etc., for 1932 were $3781.00, less profits for 1933, 1934 and 1935 of $2984.91, making the total loss for the four years $796.09. We have invested in the Red Warehouse $38,000.00 or $39,000.00, including equipment.

Cross-examination:

My warehouse was the first one built in Georgia, about 1917. The first tobacco sold in Georgia, was sold at the Red Warehouse. In 1926, we paid $32,000.00 for the warehouse. The depreciation and interest on investment charged approximates a fair rental. I do not hire solicitors. I paid my auctioneer in 1935 $525.00. The reduction in charges

would reduce my income 22% to 23%. The year I rented a warehouse and paid $4600.00 rental, Douglas sold 13,000,000 to 14,000,000 pounds of tobacco that year. 1932 was a bad season. In 1933, we had a net profit of $549.43.

The Milholland warehouse never did pay. I would say that the majority of the warehouses are efficiently operated. I know practically all of the warehousemen. All of my [fol. 562] common labor is local. One fourth of my salaried employees are local. I am interested in about nine warehouses in Georgia, Tennessee and eastern North Carolina. In North Carolina, we have a statute passed for the protection of the warehousemen, and we have never made any complaint about it. Tennessee and Kentucky do not have statutes regarding the charges.

I would say the fair market value of the building we own at Douglas is $25,000. I don't know about the depreciation, but we have charged about 5% for nine years.

I have built and have held my trade without the necessary expense of employing trade men or solicitors, composed of farmers, politicians, blacksmiths and preachers. I have never found it necessary to employ them to build up my trade. I am bitterly opposed to it. It is not a fair trade practice.

In 1935 we lost the sale of approximately three-fourths of a million pounds of tobacco on account of the fact that we were at the tail-end of the sales. That was our assignment and was a matter of a bad break.

In 1935 my auctioneers were efficient. If a man pays $800 for auctioneering service for the sale of less than a million pounds of tobacco, he gets stuck. I think there are too many warehouses on the individual markets in Georgia. We have five warehouses in Douglas, and four warehouses should normally handle the crop in an orderly manner.

The Milholland Warehouse for which I paid $4600 as rent is worth about $30,000. The rental on the Milholland Warehouse was excessive considering the small tonnage handled at Douglas in 1933. At the time — rented it, that was not an excessive rent. The tonnage handled at Douglas dropped 13,500,000 pounds to about 6,000,000.

[fol. 563] Redirect examination:

In my opinion, as a warehouseman, the charges heretofore made in Georgia, are reasonable and fair. Charges prescribed by the act of the Legislature are not reasonable.

A. W. JEFFREYS testified as follows:

I live in South Hill, Va. I have been in the warehouse business all my life. My father was a warehouseman. I have operated about twenty two years; in Tifton, Ga. since 1923. I managed the Farmers Warehouse there and was absolutely in charge. It is owned by the Tifton Investment Company, a corporation. The Farmers' Warehouse is operated separately. It was built in 1928 and I have operated it since that date. Tifton Investment Company also operates the Twin Brick Warehouse. The land cost $6,000.00, the building $27,994.62, equipment $2,000, furniture and fixtures $392.28, making a total investment of $36,386.90.

We borrow every year $50,000. Some days we pay off as much as $100,000.00. The bank charges us interest on loans and overdrafts as well as exchange.

In 1933 we sold about 2,500,000 pounds of tobacco. The gross income from commissions was $25,750.92, basket rental $227.85. Our sweepings are run into our leaf account in 1935, we had an annual loss of $2614.00. Income, less this loss, $23,364.77. Total expenses for 1935, $15,540.24—net profit $6315.60. We deposited with the registry of the court between $3500 and $4000.

I worked on a salary of $1500 plus a commission of 7½ per cent on each 100 pounds sold. I operated the business. If I sell a lot of tobacco, I make a good salary. In 1935, my salary and commission was $2,996.64. Our auctioneer gets 3½ per cent on each 100 pounds. He was paid $1,095.21 in 1935.

In 1934, commissions were $20,2121.32, basket rental $173.77. That year we lost on leaf account $53.54. We sold about 2,500,000 pounds. Net profit for that year was $6478.71.

[fol. 564] In 1934, total salaries were $7616.14. My salary and commission was $3122.46. The auctioneer earned $825.90.

In 1933, income from charges was $26,458.09, basket rental $218.19. Profit on leaf account $428.50, making a gross income of $27,104.58. Total expenses $16,4747.54, plus $998.38 interest and exchange, which deducted from our gross income leaves a net profit of $9,641.65. Total salaries were $8414.73. My salary and commission was $3500. The auctioneer earned $1156.50. His home is in

Warrenton, N. C. He is here now during the season and then goes to Kentucky. Two calculators were paid $1073.23.

In 1932, total commissions received were $5005.86, basket rental $57.30, profit on leaf account $837.07. We only sold between 600,000 and 800,000 pounds. Total expenses were $7,461.68 resulting in a loss of $1581.45. Total salaries were $3112.45. My commission and salary was $1107.45. The auctioneer drew $700. My contract with the auctioneer for that year called for $775.00. It was such a disastrous season that he settled for $700. I also reduced my minimum salary from $1500 to the amount received.

In 1931, the total income from commissions was $12,801.70 Profit on leaf account $1875.76. We had no basket rental arrangements for this year. Total income $14,677.46. Total expenses were $12,897.37, plus $560. long and short account. Deducting these from the total income, leaves a profit of $520.09. Total salaries paid were $8,284.47. My salary and commission $2996.97. The auctioneer drew $1000. We sold between 1,250,000 and 1,750,000 pounds of tobacco.

In 1930, our commission from sales was $21,341.65. Profit on leaf account $47153, basket rental $77.46. Total income $21,890.64. Expenses were $14,651.68, plus $1092.30 interest and exchange. "A bad debt there of $154.81 is included in the expense. That was a speculator that bought tobacco and left town without paying us." Deducting these items leaves [fol. 565] a net profit for 1930 of $6146.66. We sold about 3,000,000 pounds that year. Total salaries were $9346.53. My salary and commission was $3851.53. The auctioneer was paid $1000. The salaries vary from year to year. If you have a good year, naturally the skilled employees will demand more money the next year. We contract with the skilled help in the Spring prior to the selling season. The total salaries of $9346.53 for 1930 was high because if you have a good year one year and tobacco sells good, the next year when you trade with bookmen, clipmen, auctioneers and ticket markers, which we take from North Carolina, Kentucky, etc. we *we* have to pay them good money because it is right much expense to go down there and back and the season is short. If we have a good sale one year, just like any other business those men know it, and they know the warehousemen make money and so we have to step up their salaries to keep them or somebody else will pay them more. We usually make contract with our skilled labor

in April before we open the first of August. I do not own any stock in the Tifton Investment Company.

Cross-examination:

We have depreciated our investment at 2%. The roof of the warehouse requires constant repair. About seven of my twenty three salaried employees live outside of the State of Georgia. All common labor is local. We hire solicitors to get tobacco for our house. About nine employees solicit, but they also work in the house during the season, but all of my employees ride the country. The auctioneer comes down two weeks ahead of the season and helps solicit. I paid one man $35 a week and he furnished his automobile and paid all expenses. Leaf account generally shows a loss, although the last few years we have made some money. The sale of the floor sweepings, of course, is credited to this account.

[fol. 566] For the last two years, my auctioneer was on a commission basis. Prior to that time he was on a str-ight salary. There is no uniform wages paid them. We do not lend money to farmers. We do advance them small amounts, but our losses are very small. We have an audit made every year, and this is the audit made this year. I pay all of my expenses out of my salary.

In 1928, when this buildin- in which I operate was constructed prices were at the peak to some extent with reference to building materials and labor. I don't know what the building materials cost. We have kept this building in repair and spent $700 or $800 on it in repairs this year.

Mr. I. B. Pruitt was Assistant Sales Manager. He makes his home at Tifton from about December 1st but follows the tobacco market on up and operates in all the tobacco belts. In fact, all the employees I take down to Georgia follow the belt up into North Carolina, Tennessee and Kentucky.

The opening dates for the tobacco season in several belts is fixed by the national board. They decide the opening day and we close when all the tobacco is sold. They have met at Virginia Beach, sometimes Atlantic City and sometimes at White Sulphur Springs and sometimes at Asheville, N. C. and at those meetings the opening dates are fixed for all belts.

As to whether the people who engage in the tobacco industry in Georgia simply pick that up as an extra income

and then go into the other belts, will state that they go from North Carolina to Kentucky and the same principle holds true all the way up. I operate in Georgia and Virginia and follow the market up there from Georgia. I operate in one other state besides Georgia. In Mch. April and May I travel for the Robinson Chemical Corporation and then go down to Georgia about the first of June.

We have employed as solicitors no blacksmiths and try not to have any politicians if we can keep them out. We [fol. 567] do hire farmers for their influence in bringing tobacco to our market. They work also in the capacity of floor managers. Of course we get some of the farmers with the larger crops and who maybe will give us and get us more tobacco, but we also try to hire men who are competent in their particular line and who are competent in keeping up with labor and working floor labor and hiring labor. As to how many of the 23 salaried employees are hired both for solicitation and for work in the warehouse, will state all of them are so hired, the auctioneer and all, myself included. In other words, they all go out in the country and solicit tobacco before the season opens and after too, if I tell them. My auctioneer reports about two weeks ahead of the season and he rides the country. Only the auctioneer and myself and maybe two ride out any length of time before the market opens, only about four, including the auctioneer and myself. One of them is a merchant who has a store at Chula and he is the one I paid $35 a week. The other one is R. L. Dickenson. He is a farmer and politician.

Generally the leaf account shows a loss, taking it year in and year out. Last year is about the heaviest loss I ever had on the leaf account. I had a profit of $471.53 on this account in 1930, and $1875.75 in 1931, and $837.07 in 1932, and $428.30 in 1933.

In the years 1930, 1931, 1932, 1933 and 1934 about the same ratio of out of state employees would hold as I have testified to with reference to the year 1935.

On my list of expenses appears an item that was lost on speculators. Sometimes we have a speculator to sell out. That is not a proper warehouse charge but it was a loss and of course we charged it off. That is not an element of charge that is necessary for the the farmer to market his tobacco.

The item of $78.80 shown as outstanding checks written off I do not know what it represents.

[fol. 568] As a usual thing, we work in the tobacco business in Georgia about 90 days in each year.

As to how much I have made on an average traveling for the Robinson Chemical Company they paid all of my expenses and *and* everything and I got around $350 or $400 and expenses.

The Imperial Tobacco Company is considered one of the leading buyers on the Georgia market. They have a redrying plant in Tifton, Georgia. There is also one at Valdosta and one at Douglas. There are only three in the State of Georgia, so far as I know. I cannot tell whether the Imperial redries more at Tifton than is redried at Valdosta or Douglas. I don't know anything about the redrying but I would say that a company that redries it in Tifton can probably save more than to ship it to North Carolina and do that.

Competition in the tobacco warehouse business is keen and at Tifton we have drawn tobacco from Ben Hill County and Coffee County. Tifton is one of the leading markets. There are four warehouses there. There are two sets of buyers and one set of buyers can sell out about 60,000 square feet of floor space in a day. By stepping I would say 50,000 square feet to be safe, and at that rate two sets of buyers could only sell two warehouses out.

Redirect examination:

This audit here (Complainant's Exhibit 3) contains the figures about which I have testified, and I identify it as reflecting the condition of our books.

EUGENE R. BULLOCK testified as follows:

I live at Oxford, N. C. I am in the tobacco warehouse business. I have operated in Georgia since 1923, and in Oxford since 1926. Prior to that time I worked in a warehouse at Oxford about eight years. I have been in the business since 1916. In 1935, I operated at Blackshear, Ga. under the name of Farmers' Warehouse. I have one partner and we lease the warehouse.

[fol. 569] Mr. Currin and I devote our entire time to the

tobacco warehouse business in Georgia beginning in June and running through the marketing season.

In 1935, we sold 2,074,362 pounds of tobacco. Our income from commissions was $18,629.30, profit on leaf account $1204.25, or a total income of $19,833.35.

Our expenses were:

General Expense	$1690.05
Common Labor	1715.27
Salaries	5701.67
Rent	2667.46
Long & Short Account	428.22
Exchange	879.64
Interest	429.59

Amount deposited in the registry of the court $2,892.14, leaving a profit of $3369.61.

No expense item represents salaries paid to the partners. If we win this case, the amount deposited in the registry of the court should be added to our profit of $3369.61. I operate the office end of the business, and Mr. Currin, my partner, is sales manager. We do not even charge to the business our personal expenses while engaged in Georgia. This year we paid rent on a basis of $1.30 per 1000 pounds. Working capital $7500 cash, and the bank lends us the required money to pay off our sales. I do not know the amount we borrowed from time to time, but the interest [fol. 570] was $429.59 for 1935. The cash is deposited in the bank as collected.

In 1934, our income from commissions was $10,542.71, profit on leaf account $905.75. Gross income $11,448.46. We sold 1,164,962 pounds of tobacco. Our expenses were:

Rent	$1456.20
Bank Exchange	750.00
Interest	49.50
General expense	962.98
Common labor	896.93
Long and short account	125.02
Salaries	3408.10
Bad accounts	39.00

Leaving a profit of $3760.73.

No item of expense represents payment to the partners for their expenses.

In 1933, total commissions were $14,864.56, profit on leaf account $601.03. Total income $15,465.59. We sold 2,058,486 pounds of tobacco. Expenses were:

Rent	$2367.26
Advertising	105.33
Bank Exchange	529.13
Interest	211.44
General Expense	1232.69
Common labor	932.38
Salaries	3159.33
Bad accounts	62.82
Lost tobacco and errors	110.97

Leaving a profit of $6754.24. My records for 1932 have been lost. My recollection is that we broke even for that year.

In 1931, our total commissions were $13,201.58, profit on leaf account $393.10—total $13,594.68. We sold 2,187,108 pounds. Our expenses were:

Labor	$807.14
General expense	1266.26
Bank Exchange	496.06
Interest	131.33
Lost tobacco and errors	9302
Warehouse rent	2843.24
Salaries	5015.00
Bad accounts	240.01

Leaving a profit of $2639.62.

[fol. 571] In 1930, we sold $2,999,694 pounds of tobacco. Our total commissions were $19,350.36, profit on leaf account $99.31. Total income $19,449.68. Our expenses were:

General Expense	$1,597.50
Common Labor	1,415.74
Bank Exchange & Interest	1,216.09
Salaries	6,105.00
Rent	3,995.17
Lost tobacco and errors	390.18

Leaving a profit of $4,730.00. None of these years, did we charge into the expense any payment to the partners as salaries or expenses.

Cross-examination:

I own 39 shares in the Farmers Warehouse, valued at $50 a share. That is all the property I have in Georgia. The payroll for 1930 for common labor, $1,415.74, covered about 25 or 30 laborers. I think we paid 15 cents an hour that year. The auctioneer in 1930 was paid $1,200. The salary account of $6,105.00, included only three or four local men. About 80% were non-residents. None of the stockholders of the warehouse worked for us. The partnership rents the warehouse from a corporation. The leaf account made a profit each year I have testified about. The leaf account should break even, including the sweepings.

As to what constitutes the items of general expense shown by the statement, will state that that is just general every day expense and covers our small expenses of operation, such as water, lights, telephone, ice and things of that nature.

As to the number of people on a salary basis covered by the item of $6,105, will state that there were six or seven, including the auctioneer, and some three or four that were local people. I had four men employed during the year 1935 for their influence to bring tobacco to my warehouse and also to work on my warehouse floor. There was one named Raulerson, who was paid $200. R. L. Dixon was paid $200; L. M. Foster was paid $200; and J. O. Brewton was paid $200. They worked in the warehouse and solicited [fol. 572] tobacco. I think the same ratio of solicitors would apply for each of the years.

I manage the warehouse, assist in the office and look after things in general. I also operate in North Carolina. I am able to come to North Carolina and operate by reason of the fact that the Georgia season fits in with the North Carolina season.

I spent about seventy-five days in Georgia. I had four solicitors who also worked in the warehouse in 1935. I paid each of them $200. They worked in the warehouse and solicited tobacco. I had approximately the same amount each year. I do not think I would have gotten the same tonnage without solicitors.

None of the partners personal expenses, while in Georgia, is charged to the business. I operated a warehouse in

North Carolina. We have three weeks between the time the Georgia season closes and the North Carolina season opens. We have to contract with our auctioneer before we [fol. 573] know what the crop prospects are. In 1930, we pand him $1,200.00; in 1931—$1,150.00 and in 1933—$700.00.

We rent our warehouse on a sliding scale. It varies from $1.15 to $1.30 according to the average price of tobacco. We lend very little, not over $80.00 to farmers, as advances. The bad accounts consist of people buying some tobacco and failing to pay for it. It is usually small.

R. M. Sanford (R. page 1200-1220) testified as follows:

I live at Rocky Mount, N. C. I am in the tobacco business and have been practically all my life. I have been a warehouseman most of the time. I have been in the business for thirty-one years and operated my own warehouse, all except six years. I was on a salary six years out of the thirty-one. I have operated in the State of Georgia—two years at Metter, one year at Statesboro and two years in Blackshear.

In 1935, I operated at Blackshear, as Sanford & Company. My warehouse was called the Brantley Brick. Mr. A. P. Brantley and I were in partnership. Mr. Brantley furnished the warehouse and financed the business, and I ran the business. We have a warehouse of approximately 40,000 square feet. In 1935, we sold 1,646,674 pounds of tobacco. Total commissions received were $13,243.45. The total expense was $4,132.37, plus salaries of $3,863.00, making the gross expense $7,995.37.

Subtracting the expenses from the income leaves a profit of $5,247.98, in which figure is included the amount deposited in the registry of the court, which is $2,567.83. There are no salaries or payments to the partners included in the salary account. I am general manager and operate the warehouse entirely. I spend the greater part of three months in Georgia. Mr. Brantley only furnishes the warehouse and necessary finances. He does not work on the sale.

In 1935, Mr. Brantley put up $7,500.00 in cash and the [fol. 574] bank honored our overdrafts.

The expense charged includes items of expenses incurred by me in the operation of the warehouse. I have got one or two items of expense in there. I was down there before the market opened in June working the country and had different ones with me and that shows that they were reimbursed back for this item of expense.

In 1934, I operated at Blackshear. Mr. W. E. Fenner and myself had one-half interest and Mr. Brantley had a one-half interest. The same arrangements were made in 1934 as in 1935. We sold very little tobacco, about 424,000 pounds. The total income was $4,826.18, made up of commissions $4,329.60, sweepings $325.26, profit on leaf account $161.32. The expenses were:

General Expense	$615.19
Insurance	20.40
Lost Tobacco	15.65
Interest and exchange	308.69
Common labor	276.10
Salaries	2,062.05

Leaving a net profit of $1,528.12. Mr. Brantley got one half, and Mr. Fenner and I the other half. In the salary account there is no item of payment to any of the partners. My share for my services for that year was $382.03, for two and a half months work. I solicited tobacco prior to the sale. In 1933, I did not operate in Georgia. In 1932, I operated in Statesboro. We had a loss of $220.10 in 1932. There were three of us partners that year. That was actual cash lost. Our gross receipts were $1,905.66. Our expenses were:

Salaries	$430.00
Rent	824.52
Exchange & Interest	58.25
Labor	112.05
General Expense	700.94

I did not operate in 1931, nor in 1930, in Georgia. I did operate in 1927, 1928, *1928*, 1929. In 1929, I was at Metter. I made some profit in 1929, but lost money the other two years.

[fol. 575] Cross-examination:

In 1935, our salary account covered twenty men. Paid a solicitor $300 and he furnished his car to ride the country.

He was also assistant sales manager. Paid the bookkeeper $320.00. I now work with Mr. Fenner as assistant sales manager at Rocky Mount, N. C. I operated a warehouse myself for three years, but it was burned, that was in 1931.

The clip and book man I paid	$250.00
Solicitor & Asst. Floor Mgr.	160.00
Auctioneer	550.00

He also rode the country soliciting tobacco. I paid $65.00, $60.00, $53.00, $82.50, $65.00 and $30.00 to solicitors, who also weighed tobacco at night and helped on the floor. I paid $22.50 to a helper who worked on the door. One solicitor I paid $600, but he works for me all the year around in looking out for our business. He keeps in contact with all the farmers all the time. He also worked on the sale.

The solicitor to whom I paid $600 was W. E. Davis and he is Tax Collector at Blackshear and during the year I expect him to do a little soliciting for our warehouse. He is directly in contact with all of the farmers all the time and I employed him largely because of the fact that he knew everybody. He does work around the warehouse every day after the market opens, soliciting and helping me on the sales. He stayed in the front of the sales and saw that each farmer got what was coming to him. He was my contact man really.

Solicitor	$200.00
Floor Manager	175.00
Solicitor	50.00
Solicitor	300.00
"	200.00
Exchange and interest	1,044.59

Mr. Brantley took care of the financing. The interest was paid to the bank.

There are three warehouses in Blackshear. In 1934, I did not make anything, when you consider my expenses, board, automobile, etc., I lost money for the last four years, [fol. 576] which will about take up the profit I made in 1935. In 1929 I made some profit. I did not go to Georgia in 1930 and 1931.

In 1932, I was able to lease a warehouse in Statesboro. I paid $1500 a year for my warehouse in 1932 and I had a lease for three years. Mr. Brantley has one of the best warehouses I ever saw in North Carolina or Georgia.

As to the total expense, some of it was for gas and oil. We were furnishing gas and oil for about four cars. Mr. Brantley's sole function was to furnish the credit. The money borrowed all got back into the bank in about four weeks.

This year I think Waycross entered into a very intensive campaign to get tobacco and the Waycross Chamber of Commerce raised a sum and sent out solicitors. That hurt us some but at the time tobacco sold at Blackshear so fast that we were in the block all the time.

Mr. Bratley received one half of the net profits which were made in 1935 and as to whether he received that solely for furnishing the warehouse for a month or three weeks and furnishing the credit, will state he cleaned the warehouse out of all of his stuff June first and turned it over to me to use. He uses it the balance of the year for his own purposes. I am in the fertilizer business up here (North Carolina) in the off season. I reckon 1932 was the worst year during the panic. It was just as bad as any. I think the worst.

When I was operating at Metter I did not have a fair break. I had an off house, a cotton storage house, and really out of the territory of the tobacco business, and the years 1927, 1928 and 1929 was really out of the warehouse section and I had everything against me.

As to whether the prices we pay in Georgia for the rent of warehouses are excessive and extravagant, will state they are right heavy for the time we use them.

[fol. 577] Redirect examination:

If we do not win this case, my profit for 1935 will be $5247.98, less the amount deposited in Macon of $2567.83.

[fol. 578] W. C. Spence (R. pp. 1221-1231) testified as follows:

I live at Goldsboro, N. C. I have been in the tobacco warehouse business seventeen years. I operated in Georgia only one year, in 1935 at Pelham, Georgia. It was a partnership of myself and Mr. Jones. We rented our warehouse. I have kept the books on all of my warehouse operations. We sold in 1935 a little over 500,000 pounds, and

used the scale of charges generally charged in Georgia, and did not use the statutory scale prescribed by the legislature.

Gross receipts were $5067.26, including the deposit made with the court at Macon. Total expenses were $5700.30. The amount deposited in the registry of the court was $848.91, and deducting that from the total income of $5067.26, would leave a net income of $4218.35, which would result in a loss of $633.04. If we win the case and the deposit is returned, we will show a profit of $215.87. My operations would not result in a profit if I considered my work anything. If I took something for my services there would be no profit then.

We have charged an item of general expense of $1561.73, common labor $675.50, rent $1209.26, and salaries $1889.90. We had a small loss of $15.00 on advances to farmers. In the salary charge there is an expense item of my partner of about $300.00, representing his expenses while soliciting tobacco prior to the season, which includes hotel bills, bus and automobile driving expenses. He furnished his own car. It does not represent any payment to him for his time and services. I charged in $80.00 or $90.00 covering my board while carrying on the business, but no item represents payment for my time.

[fol. 579] Mr. Jones was sales manager and rode the country about two months before the opening of the season. I did not come down until two or three days before the sales begin. I took care of the office end of the business, bookkeeping, pay off men, etc.

We rented on a basis of $1.25 per 1000 pounds. We leased from year to year, with an option for the succeeding year. There are about 20,000 square feet in the warehouse. We had $13,000.00 capital—$3000.00 cash and we borrowed about $10,000.00. We paid 8% interest and exchange of one-eighth of one per cent.

I have operated outside of Georgia, in North Carolina and Kentucky—at Goldsboro and Greenville, N. C., and Lexington, Ky.

Cross-examination:

There were two warehouses in Pelham—the Big Dixie and the Pelham. Ours was called the Pelham. The Big Dixie sold about 1,000,000 pounds. Pelham is one of the

smaller markets on the extreme western side of the State. We rented the warehouse from the owners, Stone & Cunningham. The deposit in the court at Macon reduced our income and we showed a loss if the deposit is not charged as an expense, and if returned our profit will be something over $200.00. We paid the auctioneer $415.00. He helped solicit and worked actually about a month and a half. Of the total salary account about one-third was paid to solicitors. We get out tobacco from Mitchell, Thomas and Dougherty counties and some from Miller county. The so-
[fol. 580] licitors all work in the warehouse after the selling season begins. They would solicit on Saturday and after the sale was finished they would work soliciting or they worked in the warehouse when not out.

Pelham is the extreme southwest market of the State. It is in Mitchell County and is adjacent to Colquitt County, in which Moultrie, one of the largest tobacco markets in the State is situated, and 30 miles from Tifton, another of the largest markets, and Valdosta, one of the largest markets in the State, is 25 or 30 miles away. From 1929 to 1935 has been one of the worst depressions that the United States has ever felt. Things are getting better, however.

Redirect examination:

If the scale of charges prescribed by the legislature are enforced, the Pelham market would have to close. Every item of expense was necessary, reasonable and proper in the carrying on of the business.

[fol. 581] H. P. Foxhall (R. page 1231-1255) testified as follows:

I live at Rocky Mount, N. C., and have been in the tobacco warehouse business sixteen years. I have operated in Georgia ten years, since 1926. Five years in Hazelhurst and five years at Statesboro. In 1935, I operated at Statesboro. Our warehouse was known as Cobb and Foxhall Warehouse. Mr. Cobb was my partner during the five years operations at Statesboro. We lease our warehouse. It has approximately 42,000 square feet. We paid rent of $1.25 per 1000 pounds sold. Our lease was for five years, that is an option for each succeeding year, not longer than five years. We

must give notice the first of each September whether we intend to renew the lease.

In 1935, we sold 1,423,014 pounds of tobacco. I have the books showing the 1931 to 1935 operations. In 1935, the gross receipts from commissions were $11,757.79, profit on leaf account $853.59, making a total income of $12,611.37.

The expenses charged are:

Labor	$1492.76
Interest and Exchange	543.52
Rent of Warehouse	1599.19
General Expense	249.83
Advertising	285.69
Telephone & Telegraph	32.73
Drayage	254.45
Gasoline and oil for solicitors	182.65
Lost tobacco	97.03
Stationery	160.60
Fire Insurance	50.00
Tobacco seed furnished farmers	100.00
Salaries	4376.79

Making a total gross expense of $10,877.83.

Included in the salaries is $750.00 each for the two partners. That leaves a profit of $1733.54. We have also set up the amount paid into the registry of the court $1502.59, which is a part of the expenses.

We deposited with the bank at the beginning $5,000.00 in cash, and gave our notes for $7500.00 to each one of the two banks with which we did business. That made a total capital available of $20,000.00. On our overdrafts, interest was [fol. 582] figured at 8%, and exchange charged at one-fourth of one percent.

The items charged to the partners of $750.00 each, was the only expense item representing payment to the partners. The $1500.00 so charged, plus the profit of $1733.54, represents the entire amount coming to the partners for our time, skill and services in carrying on the business.

For the year 1934, the total income was $6498.09. The total expense charged was $7452.23, resulting in a net operating loss of $954.14. We charged that year an item of $750.00 paid to each partner as salary.

We sold 773,803 pounds of tobacco.

For 1933, the total income was $7343.37. Expenses

$6867.06, including $1500 charged as partners salaries, leaving a net operating profit of $476.31. We sold 1,112,764 pounds of tobacco.

For 1932, net income was $2147.49. Net expense $3089.65, leaving a net operating loss of $942.16. In the expenses there was $500.00 each charged to salaries of the two partners. We sold 316,054 pounds of tobacco.

In 1931, gross commissions were $6864.77. Gross expenses were $7705.07, leaving a net operating loss of $850.30. In the expense was included $750.00 each of the two partners. Gross sales 1,073,300 pounds.

Each of these years we put up $5,000.00 in cash with the exception of 1932, when only $3,000.00 was required. Practically the same arrangements were made each year for borrowed capital. Interest and exchange were paid at the same rates. In 1932, the exchange was reduced to one-eighth of one percent.

I usually make two trips to Georgia—one about the first of March and the other about the fifteenth of May, of about ten days each. The first of July, I usually go to Georgia and stay until the end of the season. I solicit on these occasions. I run the sale during the actual selling season. Mr. Cobb as-
[fol. 583] sists in all of these operations.

We operated a warehouse at Rocky Mount, N. C. I do some farming, but I give practically all of my time to the warehouse business. The warehouse we rent at Statesboro is fully equipped except for office furniture. We have about $100.00 invested in that and bring down with us typewriters, adding machines and check writer, etc.

The item of drayage in the 1935 expense account was drayage on tobacco for South Carolina people. The warehousemen were under an agreement in the state of Georgia not to truck tobacco, but in view of the fact that the South Carolina people refused to enter into this agreement, we were allowed to pay whatever trucking expense was incurred between South Carolina and Statesboro. This tobacco was brought into our warehouse by South Carolina growers and sold by us. I should say it was about 15% of our entire sale.

The South Carolina statutory charges are about the same as those prescribed by the Georgia Act. I have never operated there, and the chief reason that the South Carolina growers sent their tobacco to Statesboro for sale is that a law in South Carolina requires the tying and grading of the

leaves. In Georgia the leaves are sold loose, and on a good many crops they can get as much for it untied and ungraded as they can after going to that expense, which generally cost about 2 cents a pound to tie and grade this tobacco. Until the last three years, 1933, 1934 and 1935, we did not solicit tobacco in South Carolina and sold very little. In the last three years about 15% of our sales has been South Carolina tobacco.

Statesboro is about sixty-five miles from the South Carolina line. Kingstree is the closest tobacco market to Statesboro, it is about 250 miles from Statesboro.

[fol. 584] Cross-examination:

Kingstree and Timmonsville are about equal distances from Statesboro. The tobacco sold in Statesboro and grown in South Carolina comes from around Manning and St. George, South Carolina. That is about 150 miles. It is closer to Kingstree than to Statesboro. I alone solicited in South Carolina, except one year, 1935, when the auctioneer helped some. On some grades of tobacco, we can get as much for it in Georgia untied and ungraded as they can after grading and tying it in South Carolina.

In 1931, we paid $1073.30 for the warehouse and took in $5864.77. Among the salaries charged that year was $750.00 paid to a bookkeeper. We hire him for the entire year at $2500.00 and charged only $750.00 as proportionate expense for Georgia. The auctioneer was hired on the same basis, and we charged $750.00 for the time allocated to Georgia. We also paid

Bookkeeper	$350.00
Clip man	350.00
Pay off man	350.00

All of these men came from North Carolina.

I was mistaken that $1500.00 was charged that year as salary to the partners, so in addition to the salaries of $2450.00, the $1500.00 was charged as partners' salaries. Our living expenses in Georgia are not charged up to the business but paid out of our salaries. None of us leave Georgia until all of the tobacco is sold. The shortness of the season in Georgia, is due to the method of handling the tobacco. It can be marketed in a very short time.

Georgia and South Carolina operated on the loose leaf system until South Carolina changed it by law in 1921.

In 1933, we paid the auctioneer $500.00.

Bookkeeper	$400.00
Leaf Account man	100.00

We did not have a good year in 1934 because of excessive rains. We paid the auctioneer $575.00. We had to have two payoff men, one we paid $400.00 and his assistant $125.00, [fol. 585] and another pay off man $250.00. Clip man $300.00. All solicitors were local men, except our auctioneer and the partners. They are included in the labor account. We had thirty laborers paying them $1044.05. There were sometimes four or five of these used as solicitors. They were not hired exclusively for that purpose, but also worked in the warehouse as floor managers during the night and day. About 20% of them did soliciting as well as other work.

The five years we operated in Hazlehurst, we made a profit each year. In 1930, the last year at Hazlehurst, I made a very small profit. In 1935, the two partners drew $1,500.00 between them as salary. We paid the following salaries:

Clip man	$300.00
Bookkeeper in charge of office	500.00
Assistant pay off man in charge of Government credits	200.00
Ticket marker	500.00
Auctioneer	800.00
Leaf account man	426.79

They were all from North Carolina.

Gasoline and oil for solicitors	182.00
Solicitor	100.00

The leaf man was guaranteed a salary of $25.00 per week and 50% of the profits on the leaf account.

There were two warehouses at Statesboro. It is classed as a small market.

A warehouseman gets more in Georgia for the tobacco than a warehouseman would get in South Carolina, the charges being the same, because the warehouse in Georgia would get the sweepings and the warehouse in South Carolina would not. Salaries, shown in the record, exclusive of

those paid to partners, total $2,450.00 instead of $2,350.00. In addition to that, each partner received $750.00 and the partners got in addition to the $750.00 their share of the profits, divided equally. Of course, we partners had to live [fol. 586] in North Carolina also. We charged the salary in Georgia because we do not charge any of our personal expense to the expense account in North Carolina.

I have not been charging as a part of the expense salaries to be paid to me and my partner prior to the passage of the law in Georgia; I did it by reason of the fact that we charged no personal expenses of our own and I thought it was the right charge, but I have never done it before on the books. This entry or item of salary to partners on all of the statements that I have presented in this evidence is not on my books, but has been added to what the books showed on previous years. We put these salaries in in 1934 and 1935 for the purpose of income tax. I instructed my bookkeeper to put them. Prior to that time we did not.

We had 17 sales days and there are only 5 days to the week, two days over three weeks. My partner and I left Georgia and went back to North Carolina the same day we closed the market in Georgia. It is my information that the same rates are fixed in South Carolina as in Georgia by statute, and that this is also true in North Carolina. I do not know when the statute was passed in North Carolina, but I have been in the warehouse business since 1918 and the rates have been the same since. My books show an operating loss of $840.00 for 1931 but they did not show an operating loss until I had the bookkeeper to put among the expenses $750.00 for myself and $750.00 for my partner as salaries. If I had not had those items put on my books in 1931, my books would have shown an operating profit of $1,500.00. In 1932 my books show an operating loss, but show that we paid salaries of $500.00 each to myself and my partner. If this had not been charged the books would have shown a profit. In 1932, which was the poorest tobacco year Georgia ever had, I paid Vick $400.00, Beverage [fol. 587] $400.00, Foxhall $500.00 and Cobb $500.00. In 1931, in addition to the bookkeeper and leaf account man I had a payoff man who received $250.00, these were all from North Carolina, and I paid my partner and me $1,500.00 salaries. This was charged as an expense. In 1933 my partner and I got $2,000.00—$1,000.00 each, of course less the expense that we paid out of our salary.

We did not have a good year in 1934 because of the excessive rains in Statesboro. In spite of that fact we paid myself and my partner $1,000.00. 1935 was the best year we have had since 1931. We did business in Georgia five years before 1931. The best year was 1927; we made approximately $2,500.00 that year. 1928 was a pretty good year. We made something between $2,000.00 and $2,500.00 that year. Since 1930 we have been passing through the worst depression we have ever had in this country so far as I know, nearly everybody has had to accept a reduction or no profit at all in any business. I suffered from the depression up to 1933, that is 1931 and 1932. I had a good year in 1933. I did pretty well for 1933, 1934 and 1935.

Redirect examination:

Our market at Statesboro usually runs two or three days longer than the more southerly markets. Our crops are later.

C. K. Smith (R. pp. 1256-1281) testified as follows:

I have been living in Wilson, N. C., but now reside at Kinston, N. C. I have been in the tobacco business all of my life; ever since I was a boy I have worked on the floors of warehouses. I am thirty-five years old now. I have been operating a warehouse approximately thirteen years in Moultrie, Georgia, Wilson, N. C., and Kinston, N. C. [fol. 588] In 1935, I operated in Moultrie, Central Warehouses No. 1 and 2. The two warehouses were carried as one business. I had one partner with me in the business. Previous to 1935, I operated individually. One warehouse was approximately 22,000 square feet, and the other 45,000 square feet. We lease our warehouse under a fixed rental. The lease is for five years and was made the early part of 1935. We sold in our warehouse in 1935 between 2,750,000 and 3,000,000 pounds of tobacco—just a little less than three million pounds. The gross commissions were $23,698.22. I had a profit on my leaf account of $2,374.97. Total income $26,073.19.

We used the old scale of charges. We deposited in the registry of the Court, as the difference between the charges $4,455.41. Salaries were $6,350.00, general expense $14,521.00, making a total expense of $20,871.00. If we do not

get our deposit with the Court back, we will have a profit of $746.78. If we win the case we would make approximately $5,200.00 profit.

On the salaries account, there is an item of $1,000.00 each paid to the partners for salary. I am sales manager. I generally stay in Georgia three to four months. Prior to the selling season, I ride the country and solicit business. My partner is more or less the financial part of the business. He furnishes the capital and I furnish what experience I have. My partner also solicits. He lives in Georgia. At times we are overdrawn $125,000.00 in the bank. My partner secures the credit and of course we pay interest on the overdrafts and exchange. In Georgia it is 8% interest and one-fourth of one per cent exchange. In North Carolina we pay 6% interest and one-eighth or one-sixteenth of one per cent exchange. We are obligated for the next five years to pay $5,625.00 a year rent. That covers both houses.

In 1934, I operated the Little Warehouse, or No. 2. I sold approximately 1,000,000 pounds of tobacco. The rent was at a flat rate of $1,500.00. The income was approximately $11,100.00. Approximately $10,000.00 of that being commissions and approximately $1,100.00 profit on leaf [fol. 589] account. My approximate expenses for 1934 were: $1,500.00 rent, Salaries $4,000.00, Miscellaneous $2,000.00, making a net profit of around $3,600.00. I did not charge any salary for myself as an expense.

I borrowed money from the bank, depositing $1,500.00 cash to begin with, paying interest and exchange the same as in 1935.

In 1933, I operated the Farmers' Warehouse at Moultrie. The same one Mr. Fenner had in 1935. The rent that year was $5,000.00. My commissions were around $16,000.00 and profit on leaf account approximately $500.00. My expenses were approximately rent $5,000.00, salaries $5,000.00, miscellaneous $4,000.00, leaving a net profit of approximately $2,500.00. I did not pay myself any salary that year.

In 1932, I operated the same warehouse as in 1933. I only took in about $6,000.00 and my rent was $5,000.00. I had a loss of about $4,000.00. That year I left Moultrie owing the bank about $4,000.00 and had to borrow $100.00 to get home on.

In 1931, I operated at Moultrie. The warehouse I operated that year burned up. Gross income was approximately $16,250.00—the total expenses around $13,000.00, including rent of $5,000.00. I had a profit of around $550.00, in that a profit of about $527.00 on my leaf account.

I am unable to locate my books for any year except 1935, and my testimony is from my recollection for each year.

Cross-examination:

In 1935, I rented my warehouse from the United Investment Company. Neither my partner nor his family own any interest in the warehouse. The warehouses are located one in one part of the town and one in another. One of the warehouses was used last year by the owners as a store, as they were repairing their store at Moultrie. The other warehouse is probably used for cotton storage. My rent only covered the time of the tobacco season. In the [fol. 590] general expense of $14,521.00 there is set up exchange and interest which is a very heavy item. Rents of $5,625.00 and salaries of $6,350.00. $1,000.00 to each of the partners was set up. I have two auctioneers in that—one of them I paid $1,000.00 and an assistant $450.00. I had a clip man and a book man which I paid around $400.00 apiece. They are from North Carolina. Labor account does not include any salaries. The calculator got $35.00 per week. Assistant in the office $240.00. Ticket marker $50.00 a week. Then I had some solicitors who also worked in the warehouse which I paid $35.00 a week.

The leaf account shows a nice profit in 1935; about $1,500.00 of that was from floor sweepings. That is an element of profit that we do not have in North Carolina or South Carolina where they tie their tobacco and it does not fall out as it does in Georgia, but that profit does not cost the Georgia farmers anything; that comes out of the tobacco companies and not out of the Georgia farmers. It does not cost them a cent. In 1931 I lost on my leaf account $2,700.00.

My first year in Georgia was 1925. I made some profit up to 1930. I have worked on a salary in North Carolina. I was not interested in a warehouse there until this year. I have no other business besides the tobacco business. In 1931, I rented from the Colquitt County Tobacco Warehouse Company, which is owned by Mr. Vereen. In 1931

the salary account of $5,000.00 included $1,000.00 for myself. Rent for that year was $5,000.00. We pay in Georgia more rent than is paid in North Carolina.

[fol. 591] Redirect examination:

Sweepings do not represent a profit in that we must pay the farmer the original weight of his tobacco, and some of the buyers deduct shortages in their remittances to the warehouse.

Recross-examination:

I should not say that the sweepings are an incident of buying tobacco and affect the price that the buyers pay. I don't know what the tobacco companies' policies are about that, but they know there is a certain loss in the sweepings. Some buyers are better than others and this is known by the warehousemen and the buyers to be an incident in the operation of a warehouse in Georgia. In 1935 I got $1500.00 from sweepings. The tobacco companies lost this, and not the farmers nor the warehousemen.

[fol. 592] W. P. Moore (R. page 1281-1293) testified as follows:

I live at Greenville, N. C. I am a tobacco warehouseman and farmer and have been in the tobacco warehouse business for twenty years. I started at Lamar, S. C., then went to Sumter, S. C., Quitman, Ga., Metter, Ga., Bailey, N. C., Wilson, N. C. and Greenville, N. C.

In 1935, I operated at Metter, Ga., the Growers Warehouse, under a partnership of myself and Mr. Cannon. Prior to 1933, my former partner, who is now dead, owned $7500.00 of stock in the corporation that owned the two warehouses at Metter. The total stock was $42,450.00. There were three of us partners prior to 1933. My present partner and I lease the two warehouses. I owned $3750.00 of the stock and my former partner's estate owns $3750.00.

In 1935, we paid $1.00 per 1000, plus a certain amount for repairs. We sold 910,000 pounds of tobacco and paid $1010.00 rent. The gross income amounted to $8255.79, deducting the amount paid into the registry of the court of $1370.95, leaves a net income of $6884.84. We had a leaf

account profit including sweepings of $146.11, making a net income of $7030.95.

Our charges were those existing prior to the statute of the Georgia Legislature, and the difference between the charges we made, and the charges prescribed by the Act was $1370.95. The total expenses charged against the business were $5020.49, leaving a profit of $2010.46, and if we win the case, it will increase the profit to $3384.41. We did not include in our salary account any payment to myself or my partner for our time, service, skill and experience in carrying on the business. At Metter, Ga., on small market, I was in charge, Sales Manager, Manager of the Leaf Account and in charge of the floor. Mr. Cannon, my partner, was the auctioneer. We hired a very small force, and helped with the book work and did anything that came up. In [fol. 593] other words, we ran with just as small expenses as possible. We spent a good deal of time prior to the season here in Georgia and solicited tobacco prior to the season.

In 1934, I operated at the same place, in the same house and under the same rental arrangements. We had about 405,000 first hand sales and our rent was $405.00. The total income was $4064.70, plus a leaf account profit of $219.59, making a total of $4284.29. Total expenses were charged and left a profit of $1869.83, with no salaries for myself or my partner included in the expenses. Our duties were the same.

In 1935, we had a cash capital of $10,000.00 and borrowed $20,000.00 making about $30,000.00 in all. We gave the bank a note for $20,000.00, and deposited in cash $10,000.00 to our account. We paid interest and exchange.

We had about the same capital in 1934. I have no figures for the year 1933, and prior thereto. At the time of my partner's death the books became misplaced. In 1933, we had a profit of about $1400.00, and in 1932 we lost about $5700.00. In 1931, we had a profit of about $6600.00.

My partner was killed in the spring of 1932.

Cross-examination:

Metter is one of the smaller markets. I operated the Grower's Warehouse, and the other was called the Metter Warehouse. We did charge in 1934, as a solicitation ex-

pense, the gas, oil and upkeep of Mr. Cannon's car and mine, $310.85.

I paid a clerk $145.00 who came down from North Carolina; exchange $309.61 and interest $55.00. That was interest on the $10,000.00 cash we put into the business and we paid that to ourselves. We paid a clip man $70.00; book man $100.00; solicitor and demonstrator $300.00; Assistant Sales Manager $600.00. He was also a demonstrator, his [fol. 594] salary was based on a percentage of the earnings. He would go out and plant the seeds, set out the plants, select the land and show the farmers how to transplant, cultivate and cure the tobacco. He practically controlled the tobacco of every farmer he helped.

Another solicitor	$150.00
Rent	1010.00
Automobile expense	446.54

This was the amount paid to the solicitors for their automobile expense.

Redirect examination:

In a small market my partner and I did the work of several other men had there been more volume. We paid rent at $1.00 per 1000 in 1934 and 1935. In 1933, they gave us the rent to open the market. In 1932, we paid $2250.00 rent, and in 1931 we also paid $2250.00 rent.

P. H. Cannon (R. page 1293-1302) testified as follows:

I live at Greenville, N. C., just outside of the town. I am a bookkeeper. I have been keeping books for the warehouse and store about seven years. I worked for Mr. C. H. McGowan in 1935, I was in the tobacco warehouse business. I operated in Greenville, N. C. and Metter, Ga. His warehouse in Georgia was called the Metter Warehouse. I ran it as an individual. He gave me one-fourth of the business to go down and look after it for him. He also furnished all the money and shared the profits with me. In one sense I was a partner.

I kept the books during the 1935 season. This was Mr. McGowan's first year as a warehouseman in Georgia. I have the books here. We sold 865,780 pounds of tobacco.

Total commissions were $7193.57. The amount deposited in the registry of the court was $1258.33, leaving a net commission of $5935.24. We had an additional income of $84.57 basket rental; profit on leaf account $268.58, long and short tobacco account credit $16.79. We had a total income of $7592.66.

[fol. 595] Against that we charged:

General Expense	$2165.66
Salary account	1756.60
Traveling expenses incurred in going to Georgia and soliciting	388.00

Making a total expense of $4396.96, leaving a profit of $3222.64. From that amount we deposited $1258.33 in the registry of the court. No salary to Mr. McGowan or myself is included in the expenses. If we win this case, Mr. McGowan will get three-fourths of $3222.64 and I will get one-fourth, representing our earnings for the season.

Mr. McGowan acted as sales manager, and I was mainly in charge of the office looking after the books and that end of the business. Mr. McGowan used $10,000.00 cash and signed a note for $15,000.00. We do not have any interest charged for this year, but we did pay exchange. Rental was on a basis of $1.00 per 1000 first hand sales which amounted to $747.00.

In 1935, the warehouse was owned by local people.

Cross-examination:

In the salary account, we have an assistant sales manager and paid him $325.00.

Janitor	$42.00
Bookkeeper and floor manager	175.00
Floor man	187.50
Floor man	90.00
Bookman (He also worked at the other warehouse)	35.00 a week.
Auctioneer	160.00
Bookman	200.00
Weighman	80.00
Weighman	75.00
Dry Weighman (He also solicited)	75.00
Solicitor and floor man	165.00
Night watchman	32.00
Assistant night watchman	10.00

All of our salaried men were from North Carolina, except the solicitor and one floor man, and two weighmen. Our auctioneer was a young boy, but was very satisfactory.

[fol. 596] Redirect examination:

The warehouse did not hold a full day's sales. It was small and we would sell out in about a half day, at 360 baskets per hour.

Recross-examination:

Metter has not been a market longer than four years, and both warehouses are small.

Lee Edward Knott (R. page 1302-1312) testified as follows:

I live at Washington, N. C. I have been in the tobacco warehouse business. Operated at Valdosta, Ga., and Washington, N. C. I operated at Valdosta only one year 1935.

In 1928, 1929 and 1930, I had a partner at Hahira, Ga. In 1931 and 1932 I operated by myself at Hahira, Ga. I did not operate in 1933 and 1934. In 1935, I operated individually in the Savannah Avenue Warehouse. I sold around 2,000,000 pounds. My gross income was $15,131.26. I paid rent of $3500.00. Salary account $2518.00.

Bookkeeper and pay off clerk	$175.00
Floor Manager	200.00
Calculator	300.00
Ticket Marker	165.00
Auctioneer	500.00

All of these came from North Carolina. Local employees on salaries were:

Solicitor	$110.00
"	55.00
Door man	45.00
Leaf man	20.00
(Plus the profit he made on the acct.)	
Floor man	60.00
Night Watchman	125.00
Calculator	150.00

Night Floor Manager	100.00
Bookkeeper	255.00
Assistant Floor Man	60.00
Assistant Floor Man	65.00
Weighman	75.00
Check off man	40.00
Door Man	42.00
Solicitor	5.00
"	27.45
"	80.00
"	150.00
"	190.00
[fol. 597] Solicitor	400.00
Solicitor	30.00

All of these were local people. Of course, I hired the local people cheaper. My warehouse would hold a full day's sales.

General Expenses	$265.09
Freight and Drayage	7.50
Association Dues	160.00
Gasoline, Oil and Traveling Expenses	237.60
Supplies, Stationery, Etc.	476.89
Advertising Account	230.52
Common labor account	1123.06
Telephone and Telegraph	9.13
Soliciting Account	896.86
Exchange Account	832.51
Insurance Account	29.20
Interest	246.87
Rent	3500.00
Lights and Water	99.37
Long and Short Tobacco	559.47

The total amounts to $11,192.58. Subtracting this total from the gross income, leaves a profit of $3938.68. I deposited in the registry of the court $3171.10, and if this is returned to me, I will have a profit of over $6,000.00.

I have not charged any item representing salary to myself for my services.

I did not operate in 1934 or 1933. I operated in 1932, at Hahira, Georgia, individually. I operated two warehouses there, The Hahira Warehouse and The Gold Leaf Warehouse. In 1932, I lost $1150.00 for my season's work.

I came away with that much less money than I had when I went there, and received no salary for my time and effort. My personal expenses were not charged to the business.

In 1931, I would say I made about $1400.00 profit. I lost my books for these years, as well as 1930. I had a partner that year, and we divided around $2200.00 or $2300.00 profit, which represented all we made, without any salary charged.

Cross-examination:

I operated three years in partnership, 1928, 1929 and 1930, at Hahira. I made some money every year except 1932. My warehouse is one of the best built in Georgia and I paid $3500.00 a season rent in 1935.

[fol. 598] Valdosta is one of the larger markets. I am a member of the Georgia Tobacco Warehouse Association. I was not present at any meeting where a resolution was passed fixing the charges. I just got in touch with other warehouses and asked them how they were working and I figures my charges the same as my neighbors did. I have made the same charges every year in Georgia. I worked on a salary in Georgia in 1925 and 1926. The figure $898.86 is the total amount I paid for soliciting expenses. The item of $34.85 entertainment was the cost of coca-colas and ice cream we gave the buyers while the sale was going on.

The solicitor I paid $400.00 was a larger farmer and I paid him what I thought he was worth to my business. He got a lot of tobacco for my house and he worked in the warehouse about one-half of the time. It is much less expensive to hire local labor where you can than to import them from North Carolina and other states. Much of the warehouse work requires trained men and it is hard to find them in Georgia. I have one Georgia boy who is developing into a good calculator.

Hahira is only about 14 miles from Valdosta and there are a great many tobacco markets in that section of Georgia, Valdosta, Hahira, Adel, Nashville, Tifton and Moultrie. Valdosta, Moultrie, Tifton and Nashville are large markets —what are known as two-set markets. Hahira and Adel are small markets.

[fol. 599] 1928 was my first year and I made a little money every year except 1932, which was the worst year that they ever had in Georgia, and only 12,000,000 or 12,500,000 pounds were raised. The prices were very low and the

crop short. It was a great disappointment both to the warehousemen and to the farmers.

Redirect examination:

I used about $60,000.00 capital in 1935. Part of it was my money and part of it was borrowed. I had about $20,000.00 of my own and $40,000.00 borrowed. I paid 8% interest and paid the bank exchange, which amounted to $832.51. The exchange rate is about twice the rate in North Carolina.

H. A. Easley (R. pp. 1313-1331) testified as follows:

I live at Rocky Mount, North Carolina, and am in the tobacco warehouse business. I operate at Baxley, Georgia, and Rocky Mount, North Carolina. I have operated at Baxley only two years. In 1929 to 1932 inclusive, I operated at Vidalia, Georgia. I did not operate in 1933 in Georgia. In 1934 and 1935 I was at Baxley. My first warehouse was operated at Burkeville, Virginia, in 1921.

At Baxley I leased my warehouse; it contained approximately 30,000 square feet. The rental was paid on the basis [fol. 600] of $1.50 per 1000 pounds. In 1935, it amounted to $1734.15. It was completely equipped except for office equipment.

In 1935, my gross income was $11,410.78. The expense was $6652.28, made up of the following items:

Auto and Traveling Expenses	$292.26
Advertising	312.00
Insurance	105.88
Interest and Exchange	652.61
Labor	558.01
Lights and Water	22.91
Sundries	272.66
Rent	1734.15

Making a total of $3950.48. Salaries $2648.25.

I paid the auctioneer	$500.00
Ticket Marker	90.00
Bookkeeper	250.00
Solicitor	150.00
Cashier	150.00
Assistant Cashier	50.00

Assistant Manager	150.00
Floor Manager	120.00
Asst. Floor Manager & Solicitor	275.00
Ticket Marker	87.50
Asst. Floor Manager	150.00
Check out man	31.25
Weighman	120.00
Check out man	150.00
General Helper	44.25
" "	45.00
" "	25.00
Floor Manager	150.00
General Helper	31.25
" "	25.00
" "	54.00

Amount deposited in the registry of the court $2,006.28. I deducted the amount paid into the court from total commissions and get a net income of $9404.50, and deducting the total expense from that income leaves a profit of $2751.82. If we win this litigation, and the deposit is returned our profit would be $4758.50. We have not charged as a salary any payment to any of the partners. Three partners operated the warehouse. I get 60% of the profits and my two partners 40%,—20% to each. The net profits are divided on this basis and each partners pays his own expenses.

[fol. 601] In 1935, I put $5,000.00 in cash in the bank and borrowed about $2500.00. I have put up as high as $40,000.00 in Georgia. When I went to Baxley the first year, I did not get any money because they had a small crop of tobacco. I put up $35,000.00 that year, which was enough to pay off the sale. This year, the bank permitted me to overdraw and I paid interest on overdrafts. Interest was at 8%—exchange at $2.50 per $1000.00.

My two partners did all the soliciting or contact work. I operated the sale with my assistant.

In, 1934, I had one partner. The gross income was $4723.92. The expenses were:

General Expense	$1633.10
Salaries	1489.45
Loss on leaf account	215.86
Lost tobacco	13.87
Loss on advances	5.00

Total expenses were $3356.58. Profit $1367.24, which was divided between two partners. I did not set up any loss on leaf account in 1935, because it was such a tremendous amount. We had a loss in handling the houses, and I thought we ought not to count things like that because it was a tremendous amount, and I did not think it would be fair to put in the unusual loss for that year, which was $2,000.00. Tobacco was stolen and it was the first time I ever had such an experience. The loss was over $2,000.00. If I set that loss up it would throw out of line my operating picture.

In 1933, I did not operate because 1930, 1931 and 1932 were so bad. In 1932, I operated the Vidalia warehouse. I had three partners. I cannot give you the exact figures, but we sold about 700,000 pounds of tobacco and made a very small profit, if any, which was divided between four partners. I cut my own salary to $500.00, although my contract called for $1500.00. That was the year we had the blue mold. I have never seen it so bad as it was in Georgia that year.

In 1931, I operated at Vidalia with the same partners [fol. 602] as in 1932. We opened up with two warehouses and an overhead of $16,000.00 and practically no tobacco was grown. I worked that year night and day and finally broke even, and I expected to lose a lot of money. The shortage in the crop that year was due to excessive dry weather.

I was on a salary of $1500.00 and also had an interest in the business. We started in Vidalia in 1929 as two warehouses but in 1931 we consolidated under the Vidalia Warehouses No. 1 and 2. In 1931 we borrowed $40,000.00 paying interest thereon. I was Sales Manager and also manager of the business.

I think in 1932 we borrowed $20,000.00 to $25,000.00. That year we had a few hundred dollars profit, because I voluntarily cut my salary and every other man took a cut—the bookkeeper, auctioneer, myself and everybody.

In 1931, we broke about even.

I operated in 1930 and made about $4,000.00. I had four partners. Some of us drew salaries. I drew about $2500.00, and one partner drew $500.00, and as I remember, the profit was $4,000.00 before any salaries were paid to partners. Each partner after paying our salaries got $400.00 or $500.00 apiece, but I am not sure about that. We bought the ware-

house in the spring of 1930, but I do not remember how much we borrowed to finance the business. Our overdrafts would run from $10,000.00 to $60,000.00 during the sale.

Cross-examination:

In 1935, the partners drew no salaries, we just paid employees. In 1934, the season was too wet in my particular locality. My warehouse at Baxley was owned by local people, and was a stock company. At Vidalia, we rented on a flat rate the first year. We paid $2500.00 for one year and $4,000.00 for the brick warehouse. That was for 1931 and 1932. That was reasonable rent considering the investment in the two houses. I know nothing of Georgia operations prior to 1930.

I devote about two months of my time, and when you consider the expense of living in Georgia the earnings are not large.

[fol. 603] It is not a case of hurrying the Georgia farmer to sell his tobacco at all. We always sell out all the tobacco before the season closes in Georgia. Most of the time it is sold out a week before the North Carolina season opens, but some of the local people think we should stay open two months even though we have no tobacco to sell. My biggest business interest is in North Carolina. In my warehouse at Rocky Mount there is no rush of tobacco for the first few days of the sale. We have a big week in Georgia the first one, but the heaviest sales are the second and third weeks.

In 1931 in the particular part of the State in which Vidalia is situated we had a very poor crop, but in other parts of the State there was a good crop. In 1932, which was the very worst year Georgia has ever had, I made a small profit and drew a salary of $1000.00 myself.

In 1934 in our section we had too much rain. Everything stayed under water about two weeks, and when the water subsided we had scald. This was purely local in that district. 1934 was a relatively good crop for the State of Georgia, and because of the small yield in my particular section my gross income was only $4723.92 and my net profit was only $1367.24. From 1930 to 1934 we were passing through a very severe depression in the United States. Things were beginning to get a little better during 1934 and 1935.

[fol. 604] J. S. TURNER (R. pp. 1332-1352) testified as follows:

I live at Reidsville, North Carolina. I am a farmer and a bookkeeper. I have been keeping books for Mr. Smothers at Reidsville, and Smothers and Calhoun at Tifton, Georgia, and I am not keeping books for Smothers & Covington at Aberdeen, N. C.

In 1935, I kept books at Tifton, Georgia, for the partnership of Smothers and Calhoun. Mr. Smothers lives in Reidsville and Mr. Calhoun is from Kentucky. Mr. Calhoun is an auctioneer. They operated at Tifton in 1935 for the first year. They build the warehouse there. They ran the Planters Warehouse at Nashville, Georgia, in 1934. I kept the books there.

Prior to that time, Mr. Smothers was in Adel, Georgia, for awhile. Their warehouse at Tifton was called the Banner Warehouse. It contains approximately 45,000 square feet, and is owned by the partnership.

In 1935, they sold 2,396,292 pounds of tobacco at an average price of 19.17 cents per pound, bringing a total of $459,-323.17. The total received for commissions was $21,148.26, basket rent $222.52, rent of soft drink stand $47.65, making a total income of $21,418.43. The expense account was $8062.97.

[fol. 605] Errors and corrections	$60.31
Loss on Leaf Account	1593.89
Profit and Loss Account	955.01

Total expense $11,162.00, leaving a gross profit of $10,-256.43. Amount deposited in the registry of the court $3558.31, leaving a net profit of $6698.12. Depreciation on warehouse and equipment $3541.00—leaving a profit to be divided between two partners of $3157.12.

The warehouse cost approximately $40,000.00 and $3,000.00 depreciation was taken for this year. Equipment is valued at $2493.00. The capital necessary to operate was $10,000.00 cash deposited with the bank and a note for $50,-000.00, on which they paid interest. We paid interest of $175.00 and bank exchange $1033.73.

Mr. Smothers was General Manager and Mr. Calhoun was the auctioneer. They solicited tobacco prior to the season. They did not charge any other personal expense or soliciting expenses against the business.

In 1934, they operated at Nashville, Ga., except they had another partner. They sold, 1,212,060 pounds of tobacco. Total income was $10,817.80, and expenses were $8,003.40. They rented the warehouse there. Profit was $2814.40 with no charges for partners salaries. All the expense items were actually paid and were necessary and reasonable items.

E. Y. Wimbish (R. page- 1353-1364) testified as follows:

I live at Nathalie, Va. I spend three-fourths of the year in the tobacco warehouse business, and in the Spring I work for a fertilizer company. I have been in the tobacco warehouse business eleven years. I was employed at South Boston, Va., the first year and afterwards I spend six years at Vidalia, Ga. In 1934 and 1935, I operated at Baxley, Ga. In the meantime, during about eight seasons I operated at Abington, Va., and with the same people in 1935, I personally leased and operated individually, except I gave [fol. 606] a working interest to Mr. Walker. We operated the Planters Warehouse. We sold 713,085 pounds of tobacco. Gross commissions were $6580.54. I deposited with the registry of the court $1106.35. The leaf account showed a small profit of $161.12, scrap tobacco $322.34, making a total income of $7064.00.

The total expenses charged against this were $4779.96. Included in that amount is no salary for myself or my partner, or any personal expenses or depreciation on automobiles. The difference is $2084.04, which includes the amount deposited with the court. I was General Manager and assisted on the sale. Mr. Walker was the Sales Manager. I solicited tobacco prior to the selling season. Rental was on a basis of $1.50 per 1000 pounds. About 30,000 square feet were in the warehouse.

We had about $7500.00 cash deposited with the bank and paid interest on our overdrafts. We paid interest at 8% and exchange of one-fourth of one per cent. The salaries were:

Auctioneer	$600.00
Bookman	180.00
Bookkeeper	175.00
Leaf Man	70.00
Floor Manager	147.00
Floor Manager	100.00

Trade man and floor man	80.00
Trade Man	50.00
Ticket Marker	60.00
Office Assistant	46.00
Trade Man	150.00
Weighman	65.00
"	48.00
"	55.00
Check out Clerk	59.00
Trade man	150.00

The trade men worked prior to the season and also in the warehouse during the season.

Common labor	494.01
Rent	1048.56

In 1934, I had one partner. Prior to 1934 I worked for six years on a salary with the Vann Warehouse at Vidalia, [fol. 607] Ga. My salary varied, the first year I received $400.00, and the largest salary I received was $900.00. I would estimate my average salary for the six years would be from $500.00 to $550.00. I was in Georgia for the purpose of manufacturing tobacco flues, and my services were mainly soliciting. The time actually devoted to warehouse work would not be over five or six weeks.

Cross-examination:

During those six years, I was in the manufacturing business individually, and my soliciting was just a side line. There are three warehouses at Baxley, Georgia. It is a one-set market. In addition to the items of expense, there were salaries $2035.00, gasoline and oil $164.68, Chamber of Commerce contribution for advertising purposes $100.00, and such other general expenses as are customary in the business. All my trade men worked in the warehouse. I had four trade men. The total salaries for soliciting was $430.00.

I deposited in the registry of the court $1106.35, leaving a net profit of $1177.69 to be divided between my partner and myself.

In 1934 we had a small crop around Baxley, and my earnings were approximately $690.00. 1927 was the first year I was in Georgia. In 1934 we operated only 13 days in

Baxley and made $690.00. We had the worse wet spell around Baxley that I have ever known.

J. E. O'Hara (R. pp. 1364-1371) testified as follows:

I live at Covington, Kentucky. I am in the tobacco warehouse business in Georgia and Kentucky, and in eastern North Carolina, I speculate on the market. My first year in the tobacco warehouse business was in 1924. I operated in Georgia in 1924, 1933, 1934 and 1935. I operated at Carlisle, Ky., in 1933 and 1934, and in Falmouth, Ky., in 1924, 1925 and 1926.

[fol. 608] In 1935 I operated at Hahira, Georgia, the Gold Leaf Warehouse. I had one partner. We rented our warehouse there on a basis of $1.00 per 1000 pounds sold. It is a small warehouse.

In 1935 I sold 1,016,000 pounds of tobacco. Total commissions were a few dollars in excess of $10,000.00. My best recollection of the amount deposited with the court is $1450.00. We had a profit of approximately $3000.00, including the amount deposited with the court. Expenses reflect no salaries paid to either partner.

In 1934 we operated the same warehouse, under the same arrangement. We sold about 650,000 pounds of tobacco. Total commissions were about $6100.00. Total expenses were $5664.00, leaving a profit of $479.39 to be divided between two of us. This was all we received for our work that year.

In 1933 I operated the same warehouse individually. I sold about 400,000 pounds and the income was approximately $3600.00. My expenses were over $5000.00 that year and I sustained a loss of around $1500.00. That was an actual cash loss, including my time for which I received nothing.

Cross-examination:

My partner owns the warehouse and was paid a rental of $1001.00 in 1935. The only other year I operated in Georgia was 1924 at Hahira. I made a profit that year.

In 1934 Hahira was one of the largest markets. There are three warehouses now at Hahira, and in 1935 the market sold about 3,000,000 pounds.

I lost some money in 1933. This was due to the fact that I did not sell very much tobacco. I was in last place there and it was very bad. I did not do any trucking at all, [fol. 609] and other houses did. They have quit trucking now, and I will not be up against that competition in the future and the other things that caused a poor business that year will pass away because they were local and purely relative to that year. I made a profit at the same warehouse in Hahira in 1924. The tobacco business has felt the result of the depression and the depressed prices are the result of the depression. In 1924, however, the business was pretty good in Georgia. Hahira is only a little place of only about five or six hundred population and only fourteen miles from Valdosta which is one of the large markets in Georgia, but in 1924 Hahira was a larger market than Valdosta, but Valdosta in 1933, 1934 and 1935 was a larger market than Hahira. Hahira is about 10 or 11 miles from Adel and 18 or 19 miles from Nashville, but straight across it is about 16 miles. Nashville is a two-set market. Hahira is a one-set market; Valdosta is a two set market; Adel is a one-set market. Tifton is 23 miles north of Hahira, and this is one of the big markets in Georgia; Moultrie is northwest about 25 or 30 miles from Hahira, and this is one of the big markets in Georgia. There are three warehouses in Hahira.

Redirect examination:

I require about $25,000.00 capital each season. My partner and I borrowed that much money in 1935. In 1934 it was about $20,000.00 and in 1933 only $10,000.00.

E. L. Moore (R. pp. 1372-1383) testified as follows:

I live at Greenville, N. C. I have been in the tobacco business for twenty-six years. I have operated at Wilson, [fol. 610] N. C., New Bern, N. C., Kingston, S. C., Quitman, Ga., and Valdosta, Ga. I have operated a tobacco warehouse in Georgia since 1927, with the exception of 1932 and 1933.

In 1935, my partner and I operated the Alliance Warehouse at Valdosta, Ga. The firm name was Moore & Cannon, but I actually ran the business and my brother and Mr.

Cannon financed it. I rented my warehouse on a basis of $1.00 per 1000 pounds. I sold in 1935, 990,000 pounds of tobacco. My warehouse was only about 22,000 square feet. Total income was $7100.26, plus the amount deposited with the court, which was approximately $1800.00. I also had a profit of $713.41 on floor sweepings, basket rental $30.00.

Total expenses were $6782.19. Subtracting the expenses from the total income of $9643.67, leaves a profit of $2861.48 —$1800.00 of which is deposited with the court. None of the expense items reflect a salary paid to me or my partner for our services. None of our expenses are charged except gasoline and automobile expense. I lost on my leaf account $1465.69, but did not credit the account with the floor sweepings which amounted to $713.41.

Long and Short Account	$147.45
Errors and Corrections	1.77
Salaries	1609.00
Common labor	735.88
Rent	990.77
Interest and Exchange	579.13
Insurance and taxes	129.82

I ran the sale and solicited tobacco. Neither of my partners worked in Georgia, but merely financed me. We put up $35,000.00—$5,000.00 of which was in cash and the remainder borrowed. We paid interest and exchange to the bank.

In 1934, I operated the same warehouse with one partner. We sold approximately 687,000 pounds of tobacco. Total commissions were $6479.68. Total expenses $3954.01, leaving a net profit of $2525.67, to be divided equally between the two partners.

[fol. 611] In 1933 three of us made a profit of approximately $1300.00. I got $150.00 in addition to my one-third interest.

In 1932 I worked in a warehouse in Valdosta on a salary of $250.00. In addition, I handled the leaf account and made approximately $400.00.

In 1931 I operated at Quitman, and sustained a loss of approximately $2500.00. I am still paying on this debt.

In 1930 I operated in Quitman and sustained a loss that year. I was growing some tobacco myself and did not keep an accurate account of my losses. I would estimate I lost

around $1500.00. In 1930 I was growing quite a bit of tobacco and I kept track of my losses on my farming and on my warehouse business, together and my losses that year were approximately $2000.00, including the warehouse business and the farm operations.

Cross-examination:

The market at Quitman was discontinued in 1931. I operated there from 1927 through 1931. I sustained a loss in 1930 and 1931. In 1929 I had a profit of approximately $2800.00. In 1928 a profit of between $2000.00 and $2500.00. In 1927 I made around $3200.00.

In 1930 and 1931 tobacco sold very cheap. In 1931 we sold only 500,000 pounds, and the prices were very low. In 1931 the markets were discontinued at Quitman, Bainbridge, Cairo, Thomasville and Milton, Georgia, also in Claxton, Ga. and Quincy, Florida.

Redirect examination:

These markets closed because of conditions. They were selling such a small amount of tobacco that the companies stopped sending buyers, and I know that in March, 1932, the Imperial Tobacco Company did not send a buyer to Quitman for the 1932 season:

Recross-examination:

There were two markets at Quitman the last two years. There was only one at Thomasville, Cairo, and Bainbridge. General conditions closed these markets, and I know the companies refused to send buyers. Before anyone would build a warehouse he naturally would have the assurance of the companies that they would send a buyer there.

[fol. 612] J. D. Rogers (R. pp. 1384-1394) testified as follows:

I live at Pelham, Georgia, and am a tobacco warehouseman. I have been in this business 35 years. I lived in Greenville, N. C., before moving to Pelham. I have operated in Georgia 8 years at Cairo and Pelham. I have also

operated at Wallace, N. C., Washington, N. C., and Winston-Salem, N. C. In 1935 I operated the Big Dixie Warehouse at Pelham. The Big Dixie, Inc., owned the warehouse and furnished the capital and I operated it on a 50% basis. I paid rent of $1.00 per thousand pounds. The warehouse has approximately 25,000 square feet. In 1935 I sold 1,350,000 pounds. The total income was $12,286.76. I deposited in the registry of the court $2145.95. The total expenses were $6292.69, leaving a profit of $5994.07, including the amount deposited with the court. The loss on the leaf account was $235.64 and the sweepings are always carried in it. The sweepings amounted to approximately $620.00 and that made the loss on leaf account around $1000.00. No salary to me was charged into the expenses. I borrowed $20,000.00 but overdrew to as high as $60,000.00 during the season. I paid interest and exchange of $519.91.

In 1934 I operated at Pelham under the same arrangement. We had a net income of about $2200.00. My books are not available for that year. I got $1100.00 for my year's work.

I operated in 1933 at the same place under the same arrangement. I made a profit of about $200.00 personally that year.

In 1932 I operated at Cairo. I leased the warehouse there individually. I had $150.00 left after I finished that year, without charging anything to expense except what was in-[fol. 613] curred in the actual operation of the warehouse. I drew no salary for six months of my time spent there.

In 1931 I operated at Cairo. I made a slight profit of five or six hundred dollars.

In 1930 I made about $1100.00.

In 1934 I required capital of about $10,000.00, which was cash deposited in the bank; in 1933 about $5000.00; in 1932 we only used $2500.00 or $3000.00.

Cross-examination:

In 1929 I operated at Cairo and made about $800.00. 1927 was my first year. I do not remember about 1928, but I think I made about $600.00 at Cairo. My share of the profits in 1927 was about $200.00. The Cairo market was discontinued in 1932 and I went to Pelham. There was only one warehouse at Cairo. Pelham has had two warehouses for the last five years. Pelham sold in 1935 a little less than

two million pounds; in 1934 about 800,000 pounds; in 1933 only about a half million. That includes both warehouses.

Cairo was discontinued because they quit planting tobacco. The markets at Bainbridge, Cairo, Camilla and Quitman were all discontinued because they did not grow any tobacco in that country, with none to bring to market. The companies would have sent buyers if there had been any tobacco in that country. Thomasville had a poor warehouseman and he killed the market in one year's time, the first year it opened.

I spend most of my time in Georgia, demonstrating to farmers. My expenses in demonstrating for 1935 amounted — $1027.15, gas, oil and repairs to the automobile, just actual expenses, which was charged to the partnership. The amount deposited with the Clerk at Macon is not included in the expense of $6292.69 set up for 1935 operations.

[fol. 614] R. E. SHEPPARD (R. 1393-1402) testified as follows:

I live at Kinston, North Carolina. I am in the warehouse business part of the time and buying tobacco part of the time. I have been in the warehouse business since 1928. I have been in the tobacco business practically all of my life. I have been buying tobacco for the companies 16 or 18 years. I operated in Georgia at Metter, Claxton and Statesboro, and at Kinston, North Carolina. I went to Georgia in 1928. In 1935 I operated at Statesboro, Georgia, as Shappard's Warehouse. I personally rented the warehouse on a 5-year option, to be exercised one year at a time. It has approximately 32,000 square feet of floor space and I pay $1.00 per thousand pounds. I sold approximately 1,900,000 pounds in 1935. The gross commissions were $18,000.00 approximately. I cannot give my expenses accurately, as my bookkeeper has never been able to straighten my books out. I lost between three and five thousand dollars on the opening sale, due to his getting drunk. I believe, however, I made a profit in 1935. I have about 25,000 pounds of tobacco on hand which I hope to sell. I have deposited with the Clerk at Macon around $3500.00.

I have my 1934 books. I sold about 954,000 pounds.

The gross income was	$8,708.33
with expenses of	6,767.10
leaving a profit of	1,941.23

No salary to myself is set up as an expense. I have about 12 men who are skilled employees.

I paid a weigh man and solicitor	$306.00
Assistant office man	100.00
Bookman	162.50
Bookkeeper	300.00
Ticket maker	100.00
Auctioneer	305.00
Leaf man	100.00
Scale man	125.00
Scale man	160.00
Floor manager	137.50

[fol. 615] In 1934 the leaf loss was $269.25

Rent	968.88
Exchange	354.82
The general expense other than skilled labor was	3127.05

My 1935 salary account was much more than 1934.

In 1934 we put up $5000.00 cash and my overdrafts were from $20,000.00 to $50,000.00, on which I paid interest and exchange.

In 1933 my gross income was $10,743.85, with expenses of $9262.09, leaving a net profit of $1481.76. No salary for my time was set up as an expense that year. I had borrowed as much as $50,000.00 during that season. I operated the same warehouse in the same manner in 1933, 1934 and 1935.

In 1932 I worked at Metter on a salary and commission. My salary was $150.00 and I believe my commissions were about $155.00. That was the failure year in Georgia.

In 1931 I operated at Claxton, Georgia. Our total income was $7516.27, total expense $7515.57, leaving a profit of 70 cents. That was all we got for our time and it did not include my personal expenses.

In 1930 I operated at Claxton with a total income of $9742.54 and total expense of $6566.07, leaving a profit of $3176.47 divided between two partners.

In 1929 I was at Metter, Georgia, on a straight salary of $500.00, if I remember correctly, as assistant sales manager.

I spend in Georgia around 3½ months each year. I solicit tobacco prior to the actual selling season.

[fol. 616] H. H. GARDNER, the 46th witness, sworn in behalf of complainants, testified (R. 1758-1793):

Direct examination:

My name is H. H. Gardner and my residence is Atlanta, Georgia. My occupation is public accountant. I have been in this business 20 years. I graduated from Georgia Tech. School of Commerce in June of 1917 and have spent 20 years in the same public accountant's office. I was certified by examination in the State of Georgia in 1925. My present connection is with the American Audit Company, succeeded about 1923 by F. W. LaFrentz & Company, with offices in Atlanta. I am a partner in the Atlanta office.

I have checked the testimony of the various warehousemen (except that of Holton B. Wallace) witnesses for complainant. I have compiled some figures from my study of their testimony. I have a tabulation of the information furnished by this testimony by each of some forty odd warehousemen for their operations from 1931 through 1935, insofar as the various witnesses were operating during those years and insofar as their testimony provided any record of their operations. I have before me four sheets on each year for five years, making 20 sheets (Complainant's exhibit #10), which show the results of these operations for the years mentioned.

For the year 1935 my study shows the complete operatons of 40 warehouses (Complainant's exhibit #11). Exhibit #11 starts, for the year 1931, with the name of the witness from whom the testimony was taken, the name of the warehouse which he was operating, the location of that warehouse, and for the year 1935 in the next column is given, where the evidence furnishes the amount, the sum of the deposit reported by such witness with the registry of the court.

[fol. 617] The next column includes the plant investment, as shown by the testimony, although it is not entirely complete.

The succeeding column gives some indication as to the amount of funds used by these various operators, although

this testimony is not complete for the reason that some of the witnesses did not tell the full story and some of them stated that under arrangement with their bank they drew checks in payment of the tobacco sales, thus creating an overdraft the amount of which they did not know.

The next column shows the profit or loss reported by each of the several witnesses.

The next column shows the number of principals engaged in the various warehouses, together with such salaries as were paid to such principals. 54 active warehousemen show no salaries drawn or taken out of the results of the operations. In addition, Mr. W. E. Fenner (R. —) was interested in three warehouses and on two of these, in which he was not fully active, no salary was paid or report in that number. That leaves 22 warehousemen who report a salary charged as an expense.

The next column shows the depreciation charged by the warehousemen on buildings and equipment owned and used in the operation of the warehouse business. There are certain warehousemen in this group who testified they owned their warehouses but who did not make any charge on their books for depreciation. There are some who testified to having owned and used certain equipment for which no depreciation charge was entered.

The next column shows the interest on investment charged against operation by certain of the witnesses. This item relates to a return on the premises or property used in the operation of their tobacco warehouses, except I believe [fol. 618] in two cases where the item represents interest paid by the principal on indebtedness incurred in the purchase of the warehouse property.

The next column is taken from the reports of the Department of Agriculture of the State of Georgia (Complainant's Exhibits 4 to 9, inclusive; Defendant's exhibits 2 and 6) and includes firsthand sales and sales for dealers, but does not include pounds sold for owner or other warehouses contained in those reports.

The last column contains the value reported by the Department of Agriculture (Complainant's exhibits 4 to 9, inclusive; Defendant's exhibits 2 and 6) as covering the value of the sale of that number of pounds of tobacco.

The next statement (Complainant's exhibit #12) represents the names of the various witnesses and contains a

record only of those witnesses for whom or by whom a definite specific amount of commissions received from their business was testified. There are 26 warehouses in this study. This group is further confined by inclusion to only those witnesses who testified as to the amount of their deposits with the court (for the year 1935), representing the statutory reduction in weighing and auction commissions. This study begins again with the names of the witnesses, and in the next column contains the pounds sold as reported by the Department of Agriculture of Georgia, and this statement is confined to 1935 operations.

The next column records the value shown by the report of the Department of Agriculture.

The next column contains the total commissions as testified to by the various witnesses.

The next column is a compensation based upon the value reported by the Department of Agriculture, multiplied by [fol. 619] 2½% commission, and represents that portion of the warehousemen's charges which has not been changed by the Act of the Legislature.

The next column is a computation and represents the difference between the total commission testified to by the witnesses and the amount of the 2½% commission computed in the preceding column. This column then represents the weighing and auction fees, without the commission.

The last column contains the amount of their several deposits into the registry of the court as the difference between the fees charges for weighing and auction and the fees prescribed by the Georgia statute. The total of pounds sold by these warehousemen, as reported by the State Department of Agriculture, is then divided into the deposits made by the warehousemen in the registry of the court to determine the per pound rate of reduction in the weighing and auction fees occasioned by this difference between the statutory fees and the charges heretofore made. This computation results in a figure of $1.54927 per 1000 pounds, practically $1.55 per 1000 pounds, which is the difference between the weighing and auction fees charged by the warehousemen and the rate prescribed by the Georgia statute.

From the record of profit or loss reported in Exhibit #11 has been taken the record by years for the period from 1931 through 1935 of these profits or losses (Complainant's exhibit #12).

The next column of this tabulation reflects the salary amounts charged by some of the witnesses as a deduction from the results of their operations.

The next column reflects the charges similarly made to cover the depreciation of equipment.

[fol. 620] The next column then covers the deduction made by some of the witnesses to cover interest on the amount invested by them in warehouse plants and equipment.

The next column contains the sum of the first four columns and represents the earnings by years of the warehousemen, exclusive of any payment to them for any personal service or for any payment to them representing depreciation in plant and equipment used by them in the operation of the business and exclusive of any return to them for the funds invested in such physical property.

The next column is a computation based upon the difference in rates as charged by the various warehousemen and the rates for weighing and auction fees allowed by the statute and, therefore, represents the deduction from their income which would have ensued had this statute been in effect from 1931 through 1935 and had there been no other change affecting the results of their operations.

The next column shows the amount of income which the warehousemen would have derived during this period of five years had this statute been in effect and had there been no compensation to them for their personal services and no provision for the wear and tear on plant and equipment and no provision for return to them on the funds invested in warehouse plant and equipment.

In the last column is the amount of income they would receive had the statutory rates been in effect those years. It is an application of the statutory rates to the profit and loss already testified to by the witnesses.

[fol. 621] The next exhibit (Complainant's Exhibit #14) shows by years the number of pounds of tobacco sold by the Georgia warehouses as reported through the Department of Agriculture of the State of Georgia (Complainant's Exhibits 4 to 9, inclusive; Defendant's Exhibits 2 and 6).

The second column shows the total value of the tobacco sold.

The third column contains two figures as to each year. The lower figure is a computation of 2½% of the value of

the tobacco sold, representing the warehousemen's commissions; the upper figure represents the application of the average weighing and auction fees as determined under complainant's exhibit No. 12, by dividing the total number of pounds sold by this particular grouping into the weighing and auction commissions computed as explained under that exhibit. This computation figures at the rate of $4.54869 per 1,000 pounds. The statutory rates as computed under that exhibit imposed a reduction of $1.54927 per 1,000 pounds, which is slightly more than one-third of the weighing and auction fees figured under the former scale of charges.

The fourth column contains the sum of the commissions and weighing and auction fees as shown in column 3.

The fifth column shows the amount of the reduction in warehouse charges imposed by this Act of the Legislature on this particular grouping, and the last column shows this in percentage; that the reduction of total fees amounts to 25% for the year 1931, 21% for the years 1932 and 1933, and 17% for the years 1934 and 1935, or an average for the five year period of slightly under 20%. These percentages are correct to the nearest full per cent, but I did not extend them down to the elaborate fraction. For the [fol. 622] year 1935 the amount shown in column 5 shows a reduction in fees according to this tabulation of $115,814.36. I have been informed that the actual amount on deposit in the registry of the court is $115,920.90. (See stipulation of counsel, R. —.)

Defendant's exhibit No. 6, of record in this case, shows the number of pounds of tobacco, with the average price for various years from 1917 through 1935. From this I have computed the dollar value of all the tobacco and the average prices at which it has been sold. The average price for this period of 18 years has been 15.91 cents per pound. The crop was not large until 1924 and the average price for the 12-year period from 1924 through 1935 is 14.90 cents per pound. The average price during the past six years from 1930 to 1935, inclusive, is 12.27 cents per pound. Using as a basis the average price for the past 12 years during which the Georgia crop was substantial, with the possible exception of 1932, the average price was 14.90 cents per pound, while the average price for 1935 was 18.91 cents per pound. Had the 1935 crop been sold at this av-

erage price instead of the 1935 price, the reduction in the 2½% commissions alone of the warehousemen would have been $71,826.35 instead of $130,624.62, which represents the net income of the warehousemen (last column complainant's exhibit #13) for 1935 before any provision is made for personal service, depreciation of plant or equipment, or any return on amount invested in equipment is deducted.

Complainant's exhibit No. 15 is a computation showing the reduction in charges on the various average prices during the years tobacco has been produced in Georgia.

[fol. 623] Cross-examination:

I have never been engaged in the tobacco industry nor have I had occasion prior to this particular instance to audit any books with regard to tobacco production or tobacco sales by warehouses. I have read all the testimony of complainant's witnesses (except Holton B. Wallace). In my examination of the record I formed an idea of the factors that go into the determination of the income of tobacco warehousemen. The warehousemen as a group are dependent upon two factors in the production of their income, the first of which is the amount of tobacco, the volume or quantity or tonnage; the second is the price the tobacco brings. These two factors control the fees charged. The grade or quality controls the price. The individual warehouseman, just as the group, is dependent upon the quality and quantity of the tobacco which he might receive and sell. If competitive warehouses take the volume that a specific warehouse has previously had, then, of course, the latter would find his income very materially curtailed. If there are too many warehouses to handle the production on a given market, each one of the warehousemen in the territory and on that market will find his income reduced because the quantity of tobacco which he has for sale is reduced and divided. I did not approach this study or take into consideration at all the value of the warehouseman't service to the producer. As I understand it from this record, the method of making tobacco is substantially uniform in all of the tobacco growing States and the value of the warehouseman's services to the grower has been established by long time custom. Practically universally that has been true and in use so far as this record goes, against which no complainr or no effort to change has been made. Naturally, the services rendered is a factor that should be considered in connection with the

rates that could or should be charged. There are other factors also. Of course, the price of tobacco available for sale, [fol. 624] together with the cost of conducting the sales operations are factors. All these must be considered in my judgment in determining what are proper rates of fees for this service. The testimony is far from complete for the full period 1931 to 1935. The record for 1935 is fairly complete. In years previous to 1935 many witnesses testified from their recollection. Their method of keeping books was apparently not very consistent in the number and nature of accounts kept for segregration of their expenses. The average cost of the properties or facilities cannot be given because of the different modes of operation. We have single proprietors, partnerships, and the partnerships in many cases change from year to year as to the members. We also have corporations. We further have a variety of circumstances relating to the warehouse property and the equipment. Most of the Georgia warehousemen seem to rent their properties and in many cases the equipment, such as baskets and trucks are rented. There is not much testimony of the value or the cost of that property in that most of the witnesses are tenants. We have been in a period of financial depression for the last five years. 1932 reflected a practically complete crop failure and one other year the crop was less than average. Defendant's exhibit No. 6 shows that tobacco was first grown in Georgia as a commercial crop about 1917 when 1,600,000 pounds were produced; in 1918 2,668,000 pounds; in 1919 it climbed to 16,430,000 pounds; in 1920 13,200,000 pounds. The average in tonnage for the first six years is something like 10,000,000 pounds. Then there is a period of seven years in which the crop averaged less than 8,000,000 pounds per year. The evidence as to operations prior to 1931 is sketchy in the [fol. 625] extreme and primarily from the recollection of the individual witnesses and is probably not sufficient to enable anyone to secure any clear picture or definite impression as to those operations and their success or failure. I did not attempt to make any study for the years prior to 1930. The average production for 1931 to 1935, inclusive, is 48,000,000 pounds per year. For the six years beginning with 1924 and ending with 1929 the average production was 59,000,000 pounds per year, the highest being in 1929 when 90,743,520 pounds was produced; the lowest in 1924 when 30,024,502 pounds was produced. For the five-year

period 1925 to 1929 the average tonnage was approximately 65,000,000 pounds. The highest in the five years 1931 to 1935, inclusive, was 71,826,352 pounds in 1935 and the lowest was 12,171,179 pounds in 1932.

In my exhibits (complainant's exhibit #10) I have used occasionally the word "out" and by that I mean that the witness has testified that he was not engaged as a principal in the warehouse business in Georgia during that year. There are 14 witnesses marked "out". There were 44 warehousemen representing separate warehouses in operation in 1935, but as I have stated that simply means that the particular witness testified that he was not engaged in the warehouse business during that year. But from the reports of the Department of Agriculture there are a number of warehouses which are shown as having been in operation during 1931 about which there is no testimony. I, therefore, do not know whether their operations were profitable or unprofitable. The only way I can figure is from the reports of the Department of Agriculture which gives a complete list of the warehouses reporting to that Department for those years. The average price of tobacco from 1925 to 1929 is 17.28 cents per pound and the average for the period 1931 to 1935, inclusive, is 13.35 cents per pound. I would [fol. 626] say that complainants have not selected the period 1931 to 1935, but that the passage of this Act entailed upon them, unless they were willing to accept those rates and those conditions, the preparation of information available and as the most recent experience naturally constitutes the most readily available and complete information obtainable, that information has been brought out in the testimony in cross-examination and necessarily forms the information on which the issue must be decided. It is true that as a matter of fact the five years preceding 1930 were much more favorable from the standpoint of price and tonnage than the five-year period succeeding 1930. 1935 is the most favorable year from the standpoint of production by the growers and sales by the warehousemen since 1929. Although the crop of 1930 was larger, the price was very much lower than 1935. The most valuable crop in money ever produced in Georgia was in 1929 according to this record.

Complainants' exhibit No. 11 contains the record of ownership by the warehouse operators, with the exception that the Saunders warehouse, which I note from the testimony was owned by Mr. Saunders, and I have included no invest-

ment in this record. There are a number of other cases in which witnesses have testified to the ownership of this sort of equipment, baskets and trucks, warehouse trucks, etc., which are not included in this schedule of investment. From this record there were ten warehousemen who owned their plants in 1931 in Georgia, ten in 1932, ten in 1933, eleven in 1934. There is one case where Mr. Sanford testified that Mr. Brantley, his partner, owned the warehouse, but I have not included that in this record, as an ownership, since it appeared from the record that Mr. Brantley's only contribution was the warehouse facilities, together with some re- [fol. 627] sponsibility for financing it, and I have treated his portion, 50% of the operating profit, as rental and have treated the balance as income from the operation of the warehouse. In so doing I have not treated Mr. Brantley as a warehouseman to whom and for whom salary for service should be considered.

In 1935 there were 14 warehouses in Georgia owned by the operators. I have analyzed the operations from the standpoint of their expenses, but to a very limited extent. In the first place, since these men were engaged in their own business, it seemed probable that their expenses were kept at as low a figure as might be consistent with the requirements of operation, so that their profit as proprietors might be as large as possible. There are two instances of expenses which might be subject to some question. Those are very definitely minor items; one being an amount of some $25.00 for the purchase of an office apparatus; another was the inclusion by Mr. Saunders of $700.00 for expenses in attending an Association meeting at White Sulphur Springs. Frequently the item of depreciation of equipment was charged by the warehousemen for income tax purposes. A man who owns his warehouse is entitled to the expense of the operation of that warehouse, which includes the wear and tear, and he should further be entitled to a return on the amount invested in that improved real estate, just as any other property owner would be entitled to a return on any investment in a building and land. Mr. Saunders for 1935 (Complainant's exhibit 10) charged $3500.00, which he said approximated the rental after certain reductions had been made for repairs and certain entries had been included in his expenses. Mr. Saunders also charged $1032.50 interest paid to the man from whom he bought the property. It is not a proper charge to place against operating expenses and

yet that still leaves open the question as to whether the owner of a tobacco warehouse is not entitled to depreciation
[fol. 628] tion and a reasonable return on his investment.

We must remember that most of these warehouses are rented and that the warehousemen do not own the premises upon which they operate; that a man who does own such premises is reasonably entitled to a return on his investment in such fixed property and that the return on that investment has no part in the determination of the rates which should be charged for his services as a warehouseman. Therefore, in order to determine what the results of his operation as a warehouseman have been there must be some provision made for the use of the physical properties owned by him and in which he has carried on his enterprise.

Mr. Saunders testified that his warehouse would rent fully equipped for somewhere in the neighborhood of $5000.00 and the figures in this record show that a depreciation rate of 5% on the building and 10% on the equipment is used in this business. This would approximate $2500.00 or more and if we allow a reasonable return on investment, say of 6%, these figures would total approximately the sums used by Mr. Saunders—$3500.00 and $1072.50. Mr. Saunders or his bookkeeper entered these figures in a little bit different manner from the way I would have, but arrrived at substantially the same results. I am not undertaking to justify anything Mr. Saunders has said or done; I am simply undertaking to give you my analysis. I did not attempt to analyze any expense items for 1931. The only information furnished in any detail was for 1935. In exhibit No. 11, as a matter of convenience, the $3500.00 charged by Mr. Saunders was put in there that way and I wanted it to present the picture as I thought the evidence warranted. I do not know whether it represents properly depreciation or not. I have omitted in the exhibits the value of Mr. Saunders' property because I did not have the figure at the time I prepared that particular sheet.

[fol. 629] In the case of Mr. Lyddane's testimony, I include the figure he gave for depreciation in the rent column merely for convenience. In the testimony of Mr. Oettinger the item of rent $1800.00 and interest on investment $1600.00 is not necessarily a duplication. I have identified the item of rent as depreciation merely to show exactly what it was.

I put it in the rent column although the witness identified it as depreciation.

Redirect examination:

I think the operator is entitled to depreciation and a return on investment in physical properties used in his operations.

Recross-examination:

The witness, W. W. Bernard, at Vidalia, I have put under the rent column, $2500.00, which is designated as depreciation. The witness testified that he charged $4000.00 interest on investment, but these figures are identified in my exhibits as testified to by the witnesses. The "D" applies in every case where the warehouseman owns the property and in no case where he is not the record owner of the property. I have arranged these figures as I think they should be. I am not enlarging the evidence in any sense. I am putting the figures down as depreciation and I use the warehouse rental column for the simple reason that I don't want to double the number of accounts and did not want to carry on these sheets any more columns than it looked like was absolutely necessary. There is an essential distinction between rent and depreciation.

Redirect examination:

I have not changed anybody's evidence, but I may have reclassified now and then some figure, calling them one thing when they were called another thing by the witness.
[fol. 630] The testimony as to the violent fluctuations in price and tonnage is not provided for under the statute as passed by the Legislature. The amount of tobacco sold by the warehouses probably affects their income. If there is a large crop that would get a larger income, and if the price is low they get a smaller income.

Recross-examination:

I was employed through Mr. Alston's firm.

[fol. 631] J. H. SWINDLE, sworn in behalf of defendants, testified as follows:

Direct examination:

My initials are J. H. I live at Ray City, Berrien County, Ga. My business is farming mostly. I run a cotton warehouse and a gin also, at Ray City. The two chief products grown by the farmers in my community are cotton and tobacco. The cotton handled in my warehouse for the past three or four seasons has been very low, about 500 bales per season. I run a gin also. I am representative for Berrien County in the General Assembly of Georgia. Just this past session was my first in that position. In my race for the General Assembly, I came in contact with the farmers of this section. From my contact with them, I will say that the tobacco farmers in this section have not been satisfied with the warehouse charges which have been exacted of them by the warehousemen. In my race for the legislature, in many instances I was interrogated as to my position and how I stood with reference to attempting to pass a bill regulating tobacco warehouse charges. I will go further and state the reason why. For the past several years it has been generally known among the farmers of this county, and of this section of Georgia, that we were paying a higher rate of charges for the sale of flue cured tobacco than any other state or section that sells a like kind of tobacco on the same basis; and I was asked by many of them how I stood on that particular question. I did not know then, except on general information, what the statutory charges in South Carolina and North Carolina were as compared with the charges in Georgia. The general information was with reference to what the statutory charges were in North Carolina and South Carolina and whether they were more or less than in Georgia. I knew it was true from having read [fol. 632] a copy of the Carolina law. I can state what the South Carolina charges are by referring to a paper I have. This is a copy from the South Carolina bill. The charges for auction fees are 15 cents on all piles of tobacco of 100 pounds or less, and 25 cents on all piles over 100 pounds, not to exceed 25 cents. The warehouse charges, not to exceed 10 cents per hundred pounds. The 2½% commission to remain as it was. The charges I have just given for South Carolina were the same as those in the bill that was passed by the General Assembly of Georgia. We have had

a higher charge in Georgia than that. The charges fixed by the Georgia Legislature are the same as those fixed by the legislature of South Carolina. I have never visited the South Carolina tobacco market. My information is they have the same kind of tobacco in South Carolina, the flue cured type, as we have in Georgia. I don't know what the warehouse charges fixed by the statutes of North Carolina are as compared with the charges fixed by the Act of the Georgia Legislature. I have been growing tobacco myself for about 15 years. That would take me back to 1920. I don't recall when our markets first opened in Georgia; they had a market at Douglas two or three years prior to my planting tobacco. I didn't market my tobacco in 1920 in Douglas; I marketed the first I ever marketed here in Nashville. I have grown tobacco continuously since that time. From 1920 to 1930, the range of pounds for the Georgia market, I think, has ranged from a very small poundage to 106,000,000 pounds is my recollection for 1930. In 1925, 1926, 1927, 1928, 1929 and 1930, the poundage in Georgia was large. The price of tobacco was real good in 1926, as I recall; I do not remember the 1925 price, but I think I got the most in 1926 that I ever received for any tobacco. In 1927, 1928 and 1929 the prices were fairly good. These charges fixed by the Legislature are so much for auction fees; that is fixed on the size of the basket that is handled. [fol. 633] That is under the old charges before the Legislature passed the Act under attack. The statutory charges fixed by the General Assembly of Georgia changed that standard of charge. The old charge was 25 cents per hundred warehouse charges, and 25 cents per pile auction fees up to 200 pounds, and if in excess of 200 pounds, 50 cents. The Legislature changed the fees for auction fees and weighing and handling charges. The statutory charges of commissions on gross sales is the same as for the old charges. The reduction is in auction fees and warehouse charges. It was reduced in that way because of the fact that if tobacco does not sell for a high price, the auction fees and the warehouse charges fixed by the statute, while they would be the same whether the price of tobacco was high or low, they would not be so high as they have been in the past; that is, they will be lower than they have prior to this time and will equalize the charges so far as the

farmer is concerned. The charges that have been made by the warehousemen have been the same so far as the warehouse charges and auction fees are concerned, no matter what the price of tobacco; in other words you might take a case whether tobacco was two cents a pound and the auction fees would be the same, and the warehouse charges would be the same per hundred pounds or per pile. We did not get any reduction as a result of cheap tobacco. We had fourteen sales days here in Nashville during the tobacco season for 1935. It started on Thursday; I don't remember the date of the month it started on, but it was about the 1st of August. We had fourteen sales days. We had Thursday and Friday of that week; they do not run sales days on Saturdays. Then we had five days the next weeks and continued until we had fourteen sales days. I don't remember the date the tobacco warehouses in Nashville closed this year. It was before the 1st of September. I had occasion to come up here the day after the market closed to see about some tobacco records, and I did not see any of the ware-[fol. 634] housemen, auctioneers or expert laborers, and could not find any of them connected with the warehouse except one man who was left to wind up the business. There were three warehouses in Nashville this year. I didn't sell any tobacco this year at the end of the season elsewhere than at Nashville; I did last year. I did that because the market had closed before I got through curing. This particular season has been unusual. Practically all of the farmers were done curing when the markets opened. As a general rule, in years prior to this time, there was a large percentage of them that did not finish curing their tobacco until anywhere from the 10th or 15th of August. That is after the tobacco warehouses are open. The farmers are usually curing tobacco after the first day's sale. Last year I had not finished when they closed. When they had closed the sale or the market. For some reason the Douglas market stayed open later than some of the other markets and I carried my tobacco to Douglas. It is true that the tobacco growers in this section rush their tobacco to their markets or to the warehouses as early as they can, or as soon as the warehouses are opened. I can give my personal experience for my part of it. Two or three different times I have kind of waited on account of the rush to put my tobacco on the market. The tobacco is supposed to be marketed orderly with the curing as you come up the stalk, and as the tobacco

is picked and cured. In other words, you are supposed to market your lugs first and so on till you get up to the tops and tips. That is on account of the fact that it is best for the manufacturer to get the different grades and types of tobacco together if possible. My experience in waiting until the rush was over is that you have to take the price on good tobacco that the other fellow has taken for his tobacco that was worth less money. As a result of that I, as well as others, try to get it in as quick as we can. In other words, we rush it in and get it on the market, it seems the [fol. 635] better price we get for it. My experience has been, from observation, that just as soon as the Carolina markets open, the warehousemen and employees begin to drop out from the various warehouses, and that's when the price usually begins to get less. At that same time they all seem to be in a rush to get through and get somewhere else for something. That has a great effect on the farmer's attitude toward marketing his tobacco quickly, for nobody wants to wait until the tail end of the season if they can possibly help it. If the warehousemen leave and go to North Carolina, and close the warehouses, those farmers who have not marketed their tobacco would have considerable expense in getting it somewhere else, or in carrying it over until the next season. It would be guess-work for me to state the effect carrying over tobacco from one season to another would have on the price of that tobacco. They might get a good deal more or less. My experience in curing and handling tobacco and casting it out, as we call it, and in preparing it for the market for it to reach the stage where it will reach the most money, requires a period of from three to four weeks packed up in order to cast it out as we term it. If the market closes before September 1st, tobacco that is being cured from the 1st to the 15th of August cannot be given the necessary time of thirty days in which to stack it up and get it in the proper condition to be best marketed. If it has not had the time to cast out, you lose one-third of its value at least as a result of it. If you take it right from the barn and carry it to the warehouse for sale, it certainly is not in shape to sell so far as the market value is concerned. If you do that, you won't get it as you would if you cast*ed* it out like it should be. Personally, I would rather have a longer season in Georgia. A great many farmers have stated that we certainly ought to have a longer season than what we have. It is my informa-

[fol. 636] tion that the opening date of the warehouses is fixed by the tobacco companies and the warehousemen in conference. I will state that the farmer does not have anything to do with it. He does not have anything to do with the opening date of the warehouse or the closing date.

The farmers of this section do not employ demonstrators at this time. In this particular section it has been from six to ten years since they employed demonstrators to help them in the planting and advise them in curing and marketing of their tobacco. The farmers of this section are pretty well advised as to how to plant, grow, cure and market tobacco. It is not essential that they have the advice of the tobacco warehousemen in the growing and the curing and marketing of tobacco. Tobacco is a thing that you never learn all about. You cannot cure two seasons, any two seasons alike. If you have a general knowledge of how it has got to be done and how it has been done, and any experience in it yourself, and will watch your own crop, you are the best judge, better than anyone else about how to work it. I know as a matter of fact that the warehousemen do employ what they call solicitors in this section. As a general rule they are the most influential men in the different sections and as a general rule the largest tobacco farmers in the sections if they can be obtained. From my knowledge of the tobacco warehouse business and the growing and marketing of tobacco, I will say they are no value now to the grower. They are employed by the different warehousemen, and the biggest part of their work is to suggest to their neighbors and friends where the best warehouse in the country is, and where they can get the most money. The prices reported as having been paid to the farmers for their tobacco on the first day's sale by the warehouses on a market have effect as to where the farmers carry their tobacco from that time on. To some extent the solicitors have an influence [fol. 637] over the farmers after the passage and report of the sales of the first day of the market, as to where they carry their tobacco. Any leading man in the community that his neighbor farmers have confidence in has certainly got influence with them as to where they carry their tobacco. That influence, if it is successful, has no effect whatever upon what the farmer gets for his tobacco. I know of other compensation or consideration that the tobacco warehousemen hold out to prominent farmers for their influence be-

sides payment to them as solicitors. The statement I am going to make does not apply to this past season. Seasons prior to this time numbers of the farmers that had quite a big acreage and others too, so far as that is concerned, have had their tobacco hauled for them from their farms to the various markets, in consideration of them patronizing some particular warehouse. The statement just made applied to many, many folks and not the influence part of it. The influence part of it I mentioned has reference to those having been paid and they are not so numerous as those who get the benefit of having their tobacco hauled to the markets free for patronizing the different warehouses. The effect that has upon that particular farmer's expense as compared with the farmers tobacco not hauled by the warehouseman in the marketing of his tobacco is one of the main points for the reduction of the warehouse charges that is sponsored by Mr. Gaskins and myself. The average price of hauling tobacco to the various markets in our section is approximately 20 cents a hundred pounds. The reduction made in this bill as a reduction in warehouse charges, first and last, figured one way and another, will bring about the same price to the farmer as if he did not haul and we concluded that if a big farmer who has grown lots of tobacco got his tobacco hauled free, or if some influential man got his hauled free, all of the farmers were entitled to the same consideration; and [fol. 638] that the reduction in the charges would approximately amount to the same price being given special individuals for their influence and patronage. It is true that the charges fixed by the Legislature would mean that every farmer would get the tobacco marketed at the approximate cost that the influential farmers have been getting their tobacco marketed at and where the warehouse hauled their tobacco. The comparison of a cotton warehouse and a tobacco warehouse in caring for the farmer's cotton, the grading, storing, insurance and handling based on poundage or with reference to the price of the commodities, the cotton warehousemen receive approximately one-fourth as much as the tobacco warehouseman does. I can give the actual figures. I operate a cotton warehouse and have for the past three years. The Government has made loans to cotton farmers. I have taken care of the cotton. The farmers give their notes to the Government and the warehousemen signs the agreement for the handling, storage, grading, sampling,

receiving and loading of their cotton; and the agreement provides that the cost of those things shall not exceed 25 cents per bale and a bale is based on 500 pounds, for such services. And generally the warehousemen, as sales agents, handle this cotton for the individual or the government because he must do so so much cheaper. For that reason they select him as the sales agent. It is provided that he shall not exceed a greater amount than 2% of the sale or 85 cents per bale whichever is less. The insurance on my house, of course, is rather high on account of the local conditions and not much protection. It takes me 14¢ per bale or cost me that per bale per month and leaves me a net of 11¢ for the services enumerated and 85¢ for the sales charge, making a total of 96¢ based on a $50 or $60 valuation. The reason the insurance charge is high on my cotton warehouse is because of not having the protection that other towns have where they have proper and sufficient water at the [fol. 639] warehouse. The rate in Ray City is higher than it would be in a large city, and then I haven't the sprinkler system either, and that makes insurance less. That would also apply to other small towns as well. This cotton charge or the charge that makes up the income to the warehouseman that I have described would amount to less than 1% on a $50 valuation per bale. On a $60 valuation, it figures just a small fraction more than 1% for the services enumerated. The sales of tobacco from my farm this year amounted to 23,038 pounds. It sold for $4409.63 at a cost of $213.34 warehouse charges. The average price per pound that I received for that tobacco was 19.14 cents. The average cost for the sale was approximately 1 cent a pound on 4.83 per cent of the entire gross sale. That is more than four times as much as the cost of marketing cotton. The percentage of cost last year on marketing tobacco for the entire state was 5.458 per cent of the entire gross sales. The price was higher this year. The 2½% commission was not effected and as a result of the higher price the percentage of the cost was lower. The average percentage of cost heretofore has been over 5% approximately, and more than five some of the years. The tobacco warehouseman runs his warehouse on an average of three to four weeks. The cotton warehouseman on an average runs from forty to sixty days for what is known as the busy season. Tobacco that has not been sold at the end of that season will have to be carried

to other markets to market it or kept over for another year. That tobacco is not handled as cotton is that is not sold. If you do not sell tobacco, you have to pack it properly and preserve it for another selling season. It is not kept by the warehousemen as cotton is. A great deal of the cotton used to be sold and passed from the warehouse, but since the Government has been making loans, the majority of it remains in the warehouse. I cannot say for how long because that's up to the Government and when [fol. 640] they want to move it. Some of the cotton I have in my house has been there two years and some has been there a little less than one year. This cotton remains in the possession of the warehousemen and he is responsible for it during that period. There is another responsibility on the cotton warehouseman in handling this Government cotton. He has to certify as to the grade of all the cotton on which these loans are made, and if it does not come up to that grade when they check it up, the warehousemen is also responsible for the grade and has got to make good any deficiency in grade he might make a mistake in. In the cotton warehouse business I have no charge for weighing cotton. It is not separated; I get no charges whatever except those enumerated. They are in a lump sum so much a bale for handling; and those to whom loans are not made as a general rule I buy the cotton myself, and of course where I buy it myself the customer pays no charge at all. I would say there is no difference in the investment in cotton warehouses and the investment in tobacco warehouses. Of course some are brick warehouses, some cotton warehouses are, and some are tin warehouses, and it is the same way in the tobacco business. I have never seen what you call a storage tobacco warehouse. These sales houses are not storage houses. These tobacco sales houses in Georgia are not storage warehouses and are not more expensive than other warehouses, including cotton warehouses. In this section of Georgia the tobacco warehouses are used for sale purposes only; I have never seen any tobacco stored in a sales house. From my best experience it would not cost any more to market one million pounds of tobacco in a warehouse in one month than the marketing of ten million pounds in the same warehouse in two months. It would certainly cost less the shorter season it is marketed in. In the face of the evidence of the plaintiffs, which

I have read and have a copy of with reference to the statements that all experienced and skilled laborers working on [fol. 641] the Georgia market are hired by the season and not by the day or by the week. That is what they say. It appears from their record that they have to pay this skilled labor the same amount for fourteen days as they would for five or six weeks selling season.

We, as farmers, would certainly appreciate the fact, if that is the case, if they would keep open at least four or five weeks as a selling season if it is not going to be any greater expense. The common labor hired for these various warehouses was hired by the hour and not by the day or the week and any time that their services were not needed for the transaction of the business in their capacity, they were immediately dismissed. I don't see how the common labor would be any greater expense in Georgia than in any other place on a per hour basis. The common labor would not be more expensive for a season of a month or five or six weeks than it would be for two or three months. I do know that they were paid by the hour, and I do know that they were immediately dismissed when their services were no longer needed. A season for a month or for two weeks would certainly be less expensive to the tobacco warehousemen than one for two or three months service would be. Under the fixed charges for the services of the tobacco warehousemen, so much for auctioning based upon the size of the basket, so much for weighing and handling, and a 2½% commission on gross sales, the tobacco warehouseman would not receive any more by keeping his warehouse open for three months and selling ten million pounds than he would by keeping it open twenty-one days and selling ten million pounds, because it is on a percentage basis and fixed charges. If he sold it all in one day and got his money, he would be ready to go home when night came. The warehouses have continued to increase in Georgia in the tobacco section since 1930 when we have sold a very much smaller tonnage than we did years prior to that time. For instance, we have got more ware- [fol. 642] houses now than we had when we sold 106,000,000 pounds, and they will continue to increase as long as the warehousemen can collect such charges as they have been collecting, because there is money in it. (Counsel handed to the witness a map of the whole tobacco section and tobacco counties in Georgia.) This map shows the tobacco

counties of Georgia. It shows the fifteen markets of Georgia; it shows by the red lines the public highways from market to market, and the distance between each point is marked on it. That is, it is marked showing the distance from one market to another. This left hand or right hand table here gives the names of the markets, the number of warehouses operated in each market, and the number of pounds is marked by each market, and I also have another record that will show the amount of pounds marketed by each warehouse. The marks showing the warehouses on this map and the markets represent the situation as of the year 1935. If there is no greater expense to a longer marketing season than there is to a short marketing season, we will be very glad to have a longer season and for the sake of saving this item of expense, great expense as the warehousemen claim it to be, we should operate with two-thirds of the houses in a four weeks season just as well as we are operating in the short season that we have been operating with all of the houses and save considerable expense as the different warehouses claim they could on the expenses according to their statement, for they could sell four million pounds just as well as they could sell ten million pounds at just about the same expense, because these same skilled laborers at high prices are now being employed for each and every different warehouse that operates. In addition, they employ them for the season. In 1935 the poundage for Tifton was over ten million pounds, and they had four warehouses. Douglas had five warehouses and marketed a little over seven million pounds. In Douglas there were five warehouses operating. There [fol. 643] were five crews of these expenses of skilled laborers that sold 7,718,578 pounds. In comparison on the Tifton market there was only four sets of these experienced, skilled, high-priced laborers that had to be paid, and they sold 10,150,920 pounds. Neither of those houses would have been as congested at any time as it was with an orderly marketing of their tobacco for a term of four or five weeks with one-half the floor space and one-half of the skilled experienced laborers. I have a statement here of the warehouses and showing the amount each tobacco warehouse marketed in 1935, and also for 1934. That is a certified copy from the Georgia Department of Agriculture showing the final consolidated report for 1935 of the various warehouses in south Georgia, showing the amount of

tobacco handled and the price received, the average price for 1935. I also have it for 1934, but it is not a certified copy. I can swear that this 1934 report is a copy of the record I received from the same place that I received the other one. This shows the location of the warehouses in Georgia, the poundage sold, first hand in 1934, the total value, and the average price per pound, the pounds sold for dealers, the amounts received and the average price. From the extreme eastern market to the extreme western tobacco market in Georgia is approximately 225 miles. The tobacco belt from north to south is approximately 150 miles. There were 45 warehouses in that territory which operated this past season, in 1935, and 39 in 1934. There are fifteen markets. I don't know how many *how many* warehouses there were in 1930. Since the passage of the bill by the General Assembly fixing warehouse charges, there has been a warehouse built in Tifton, Georgia. I know that has been built because I saw it being built. It was built since the passage of the bill. I cannot state when that warehouse was completed, but in going to and from Atlanta I know it was started in the early part of the year 1935, and was completed after the legislative session was [fol. 644] over, because when I came home from Atlanta after they closed the Legislature, there was not anything up but the pillars and the sills and the foundation and the floor. It was operated in 1935, and sold over two million pounds. That house sold 2,175,592 pounds this year. I don't remember the exact date this petition by the warehousemen was filed and served in Georgia,—the petition in the United States District Court for the Middle District of Georgia. It was the latter part of July last year, just prior to the opening. I mean this year; last season I meant to say. The warehouse in Tifton to which I have referred was in process of construction and completed before the filing of this bill. I am not familiar with the average rental charged for the warehouses. I am pretty familiar with the warehouses in Nashville. The names of the three warehouses there are the Union, the Independent and the Planters. The Union Warehouse is constructed of galvanized iron, wood floors. In my opinion the market value of it would be $20,000. The Independent Warehouse is of the same kind, but a smaller house. In my opinion I would say it would be worth $12,000 to $15,000 on the market, and the Planters approximately the same as that.

They are not expensively constructed buildings. All of the warehousemen who operated in Nashville in 1935 rented their warehouses. All of the warehousemen rented, either on the tonnage basis or the flat rate. I know what scrap or sweepings is in the operation of a warehouse. I don't know who gets that. In my opinion, there would be a great deal more sweepings as the result of hurried marketing of tobacco than there would be if it was more leisurely marketed. Tobacco is carried in by the farmers, generally in sheets. It is turned over into the tobacco baskets. It is transferred by truck to the scales, weighed and dumped on the floor in rows in tobacco baskets. The piles vary in weight of course according to the way the farmer wants [fol. 645] to make it, anywhere from a small amount up to three hundred or four hundred pounds. This year the season was very short and we had only fourteen sales days here in Nashville. It was just like a circus at the warehouses in Nashville for the first seven or eight days, on account of being crowded. The farmer brings the tobacco to the warehouse and it is packed in round piles on sheets. Of course the conveyance is either by wagon or truck until it gets to the warehouse. The warehouse furnishes hands for the unloading of the tobacco. The farmer supervises the unloading of the tobacco; he is right there because on numerous occasions there is a load that belongs to more than one farmer, possibly one half dozen on one truck, and there has got to be some superintendent to keep it straightened out. When it is passed into the warehouse, the first thing done is to weigh it. The farmer doesn't necessarily remain with it when it is weighed, he can see it if he wants to. There is nothing compulsory about following it to the scales or where the lots are dumped. The different lots are consolidated for the convenience of the warehousemen in putting together all of the tobacco that belongs to one man in one lot. The farmer does not get a slip that indicates the amount of tobacco and which are his piles or lot; he gets a card showing on it which is his lot number. He does not get any receipt. He gets the statement of the warehouse charges with his check, when he gets his check for the tobacco after it is sold. He gets a slip or card with his lot number on it, which indicates his tobacco. He gets a card, or what is commonly known as a dog tag. That is a kind of card or little round metal tag. Some of them use card board and some

of them use this round metal tag. The farmers call them dog tags; they have the lot number on it. After the tobacco is weighed, it is carried to the row where it is placed on sale. It is not in the sheets all during this period. It is taken from the sheets immediately after being un- [fol. 646] loaded and placed in the baskets. In other words, they unfold the sheets and lay the basket over it and two men take it, one on each side, and they flip it around bottom up. That is done before it reaches the scale, and it is then put on the truck and carried to the scales and weighed. From there it goes to the floor where it is actually sold. It is dumped out of the sheets into the baskets, then put on the scales, and then carried and placed on the floor. The warehouseman renders all that service. They don't use negroes for that; principally white men as common labor. During all that time the tobacco is loose and not tied together. There is no waste up to where I have mentioned. There is no waste before it is weighed. It all gets into the baskets; there is no waste so far as the farmer is concerned. The waste is the result of people principally traveling over it, and the buyers when they are buying it, more or less, get a handful from every pile, and of course with the number of people working in and around it, it is knocked off and falls off the baskets. Then after it is sold the men in taking up the tobacco off the floor, after it is sold, and the warehousemen are then through with it, and I mean the men of the tobacco companies, or the company that buys it, or that buys a particular pile of tobacco—the sale is followed by his crew, and the tobacco is taken up by them, and not by the warehousemen. The wastage is caused by the buyers examining it and tearing up the pile for the purpose of finding out what they are going to buy, but most of the waste is caused by people running over it and kicking it around. The wastage would be eliminated to a great extent if the baskets were put further apart, and that would give more room for the sale. It is due to the rushing of the season. If the piles of tobacco were tied up by the farmers and brought in in bundles securely tied and the tobacco was unloaded as I have described and weighed and placed on [fol. 647] baskets, there would be less wastage. Not tying up the tobacco inures to the benefit of the warehouseman in the sweepings. I don't know whether there is any more service required of a warehouseman in the handling of

tobacco as it is marketed in Georgia, not tied up, than there would be if it was tied up. When a pile of tobacco is brought into a warehouse not tied up, but brought in in a sheet and dumped in a basket, weighed and carried to the place where it is sold, that is the extent of the warehouse service to the farmer in the handling of that tobacco. If that same pile of tobacco was tied up in bundles, there would not, in my opinion, be any less service than that which I have described which the warehouseman would be called upon to render. I have seen large piles of tobacco in Georgia which were tied. I cannot see any reason for any less expense in handling it than in handling the other tobacco. The same process of loading, unloading, flipping and putting it on the sheet and transferring it to the scales and from the scale to the floor is all the same thing. The farmer has not heretofore dictated the way that tobacco is marketed in Georgia, especially with reference to whether it should be tied or not; the farmer has never had anything to do with it. Personally, I have had nothing to do with shaping the methods and the policies of marketing tobacco in Georgia, and so far as I know, no farmer has ever had anything to do with it. My first experience in the tobacco business, and I did not go into it until tobacco had been grown a year or two, and of course I visited the markets and saw how it was handled; I just followed the natural custom, or followed the crowd. There has been no effort of the part of the warehouseman to change the method that has obtained in Georgia in the marketing of tobacco, that I know of.

Cross-examination:

When I referred to Mr. Gaskins as one of the sponsors of the bill of the Georgia Legislature under attack, I referred [fol. 648] to Mr. J. Henry Gaskins, a member of the senate. He is Senator from this District. At the time the bill was introduced, I was representative of Berrien County. He sponsored the bill in the Senate. In other words, he introduced it in the Senate and it came to the House and I took charge of it in the House. Before Mr. Gaskins and I were elected to our respective official positions, we had discussed the matter of warehouse charges. As to whether one of the main planks in our platform, if we had one, was the reduction of warehouse charges, I cannot answer for Mr. Gaskns.

I can for myself. I told them I would make investigation; I told them I was not familiar with what the warehousemen made, but I told them that if I found that there was any extortionate profit, I would do all I could to see the bill passed regulating the charge. I have never learned how much profit tobacco warehouses have made during any year, only by their statements to the court of the exact profits. I refer to their evidence brought out in this proceeding. Personally, I have never operated a tobacco warehouse, but I have operated a cotton warehouse. So far as the storage of cotton and tobacco is concerned, it is very much alike. The storage of cotton is receiving it and taking it into the warehouse and keeping it a limited time. Now the tobacco warehouses charge us for that and call it warehouse charges, I mean that handling charge. The cotton warehouses also call their charges warehouse charges and their charges are for the service rendered in keeping that cotton. The warehouse charges referred to on the tobacco warehouse bill so far as receiving and weighing and keeping the tobacco is just a matter of form. That is, with reference to the charge that is made for warehouse charges in the warehousing of tobacco, and that only covers the insurance of and the weighing of that tobacco. The storage part for the tobacco warehouse is not storage because it is put in and immediately carried out the same day [fol. 649] it is sold. If a given warehouse has a sale on a certain day, and the sale is completed, what is on the floor when the buyers come along and when the sale begins, that tobacco is taken off immediately after the sale. The tobacco warehousemen do not store. Of course if it is put in the warehouse and could not be sold, it remains on the floor until another sale is reached in that particular house, and there is no extra charge for that so far as the tobacco warehouse is concerned. If a sale is commenced on one day and not completed that day, it remains there until it is sold or the house is sold out. When the floors are filled and the sale passes on down the rows, the tobacco is removed by the purchasers because of the restricted floor space and so that more tobacco may be put on the floor for the next sale. I stated that the baskets of tobacco were placed so close together that it caused more waste. In a crowded condition, it is nothing but natural for the warehousemen to put them as close as they can get them, because it means more busi-

ness for them. I think it is true that a great many people who visit the warehouses trample over the tobacco and cause waste that is usually termed as sweepings, and that these people are people who have no tobacco on the floor and are there as a matter of curiosity. I don't think the warehouseman is at fault in any manner for the waste of this tobacco, except in crowding his baskets where there is not room for the people. Thos- people who are there as on-lookers and others interested do not have room to walk about between the aisles and the baskets. The doors of the warehouses are open at all times. I can't conceive of any way the warehousemen can keep any sort of people away from the sales. It is a public place and they have a right to be there I guess. I think they are at liberty to walk in the doors and see the sales, but I never thought they were at liberty to walk on anybody's tobacco. A great many of them do not care whether they walk all over it or kick it as [fol. 650] they go. I have no objection to a warehouseman using his floor space, especially in view of the fact that the season in Georgia is short and the sales are fast. I testified that the date for the opening of the marketing season is fixed by the buyers and the warehousemen. That is my information. They meet in conference, the buyers and the warehousemen, and fix the opening date. It would be only my opinion as to who controls in case of a difference regarding the opening date, but I am of the opinion that the buyers control. From my personal experience, when the market is opened the growers rush their tobacco to market. I have given my reasons for that. I still contend that it would be more advantageous to the growers to have a longer marketing season, and yet I confess that insofar as my crop is concerned, I rush it in and market it just as fast as I can; I think I made myself clear about the reason. That is true of all other growers who have had any degree of experience in marketing tobacco in this section. They all get it there as quick as they can. I can think of a necessity to keep the market open longer than it is necessary to market the crops; it is because it is customary, as I stated in my evidence this morning, that the man who markets his tobacco first as a rule gets the best price for it, and because immediately after the opening of the Carolina markets, the skilled workers as they call them, and at times part of the warehouse force and warehousemen and part of the buyers leave this section

before the tobacco is all marketed. Just as soon as that begins, the price of tobacco almost invariably gets less than what it was to start with, and the farmers have become accustomed to that kind of treatment, and acquainted with that practice so everyone of them are going to try to get their tobacco to market first, and get it sold as quickly as possible. If we had an orderly market of four or five weeks, [fol. 651] I am sure there would not be any such congested conditions as there are now in the warehouses operated on the Georgia market. By orderly market, I mean to market it in an orderly manner and not to have these block sales and such sales and overcrowded conditions at the warehouses. By block sales I mean where you cannot sell out the house because it is congested in there, and they sell in one warehouse all day and not get through with it and go back another day and start over selling the same house, that is, sell the next day what remains over in the particular warehouse. If they do not have to continue that sale, the buyers would go to another warehouse on the next day at a sale to be made there. In other words, you cannot sell it any faster than the buyers can buy it, whether you have one house or forty houses. The buyers buy at one house, and you would not need but one house to sell it in if you could get all of it in the house and you would not need but one set of buyers or two sets of buyers. All of the tobacco markets, I think, open at nine o'clock in the morning on the sale, and close not later than five o'clock in the afternoon of that day, so that only a certain amount can be marketed with one set or two sets of buyers whatever you might have at a place. I mean by that, if there was one warehouse in Nashville that had the same floor space as is represented by the three combined, you could sell all of the tobacco in that one house. You could do that on one market that has one set of buyers, and you could do that on the market that has two sets of buyers, like this market or Tifton, if they had floor space, and then you would not have any discrimination against one house. I don't mean wilful discrimination. For instance, take Tifton this past season, the Banner Warehouse, the new warehouse I spoke of in my evidence this morning, the sale started Thursday and it was the following Monday before that house got to sell any tobacco, and then the incoming tobacco followed up the [fol. 652] cleaning of the other houses and waited because

they could not sell any more than those buyers would buy. They cleaned the warehouse out after the sales are made. They have their men, the buyers, to follow them and read it out and prepare it for shipment immediately after the sale. The warehousemen have no control over it after the sales. The buyers take charge of it immediately after it is auctioned off and it is in their care the rest of the way. If we had one warehouse in Nashville with the same floor space as the three combined, it would cover more than a city block. You cannot very well combine the three in one house. When tobacco is offered at the warehouse, it is usually offered in sheets. It is not sold in sheets, but it is offered for delivery to the warehouse for handling, it is usually offered in sheets, whether it belongs to one man or whether it belongs to several using the same vehicle for transporting it. When the vehicle, whether it is wagons or trucks, reaches the warehouse, it is taken charge of by the employees of the warehouse, and the tobacco is immediately dumped into the baskets before there is any waste. Then it is conveyed by floor trucks to the scales and it is weighed and a deduction made for the weight of the basket. There is no wastage up to that time or from that time until it is placed on the floor for sale. As the sale proceeds and the buyers go down the rows, they go through the piles of tobacco usually and dip their hands into the bottom of the baskets and bring the bottom layers up so they can get a general sample, in order to know how to grade it. There is some wastage caused there. People walking over the tobacco cause more waste or wastage. The method of handling it after it is purchased by the buyers causes still more wastage. The farmer or grower is paid according to the weight of the original basket. As I stated this morning, I do not know who gets the profit from the sweepings or waste, but as a matter of general knowledge the warehouseman gets it. [fol. 653] I know the farmer does not *not* lose it. I don't know, except in a general way, the items of expense that it is necessary for a tobacco warehouseman to incur during any given season in the handling and sale of tobacco offered his warehouse by the growers. I can figure the number of employees employed for that purpose and with reference to the labor know something about what it will take. I do know that. And I do know that the expenditures prior to the

opening of the marketing season are unnecessary expense so far as the farmers are concerned. That would not be a conclusion on my part. I know it would not be worth anything to me, whether or not they offered me any solicitation. In my farming operations I do my best to keep up with things in general which are necessary to be known in order to operate a farm successfully. It is a fact that I have been successful. That does not apply and is not necessarily true with reference to many farmers in my own community. A great many of them growing tobacco and marketing it as long as I have have never gained the knowledge that I have with reference to it. Of course a good many of my neighbors need help and instructions from the time the tobacco beds are planted until it is cured, but they need different help than what the soliciting agents give because he cannot stay on the job and give the service that fellow needs. The soliciting agents do call at intervals on all the growers. I don't think it is true that as years go on and people grow up and embark in agricultural pursuits, a great many young men who have never grown tobacco before go into the business. The young men going into the tobacco business for themselves, usually are boys raised on a farm and they have come up in the tobacco industry. In fact some of the boys and the ones most successful in the community are young men. That depends on whether or not he has carefully followed the business. I have never operated a tobacco warehouse. I do know that in the conduct of that business [fol. 654] and particularly in Georgia, as it has been run in the past, we have a very short marketing season which necessitates and requires a great many more employees than I am required to employ in the operation of a cotton storage warehouse, because the tonnage is so great that it requires of course more labor. In the operation of a cotton warehouse the season is much longer than the tobacco marketing season in Georgia. Of course it is very short also, only forty to sixty days covers the actual season, but a great deal of cotton remains in my warehouse after the growers dispose of it. My storage charges are regulated per bale per month. The maximum charge the Government allows me as a commission merchant for the handling of cotton is 85¢ per bale, or not to exceed 2%, whichever is lower. The tobacco warehousemen get storage charges; he stated in his statement there that he was charged $2.50 per thousand dollars; all

the warehousemen do. The warehousemen stated in their statements that there were warehouse charges kept by the house, auction fees and commissions on sales. Everything the warehousemen have testified to about the charges shows that the charges are for services rendered. In the case of a cotton storage warehouse, we store the cotton and the charge in the last analysis or ultimately depends largely upon the length of time it was in the house. In other words, if I take a bale of cotton in for the Government, I weigh it, grade it, sample it, store, and insure it, issue a receipt for it and when it is sold I load it and deliver it to whatever kind of transportation may be used and I get 25¢ for it, if it stays there a few days or up to one month. If that is what happens, then I get only 25¢ and that is all I get for those services. I open my cotton storage warehouse in the morning any time business comes, late or soon. I generally open about sunrise, and I close it whenever I get through business, any-[fol. 655] where from sundown to midnight. That is usual and customary in the operation of all cotton warehouses I have myself. I don't find it necessary in the operation of my cotton warehouse to employ more than one shift of workmen; in my small warehouse I do the biggest part of the work myself. It is not necessary for me to have any skilled help. Of course I would have to have skilled help too, if I did not take the responsibility of doing the work in the day time and the bookkeeping work at night. It is necessary in the operation of a cotton warehouse to employ some skilled help, but I perform all the duties in my warehouse that skilled help employed by other similar operations perform. Under the conditions in my house, I am the truck man, the weigher, and I have issued receipts and for the last two or three years filled out the blanks for them to get their money from the Government and all; completed the whole job myself. At times I employ common laborers in the conduct of my warehouse business, in rush periods. In my little warehouse I have never employed more than two at one time for the last five years. It is reason to know that in the conduct and operation of a tobacco warehouse and in view of the short season, they have to have those skilled employees. If the cotton was pouring into my warehouse like tobacco pours into those warehouses, I would have to have the same amount of hands. It is necessary in the handling of this tobacco from the time it is offered on the drive-

way and until it is finally sold and the money paid over the counter to use a large number of common laborers. I don't think it is necessary to keep the warehouse open day and night, except they are fighting for the business. I think it has been generally true since I have had any knowledge of the tobacco warehouse business in Georgia. I would not say it is true that notwithstanding the fact that they keep their warehouses open day and night for the receipt of growers tobacco, that farmers have offered their tobacco [fol. 656] to the warehouses and that it had to be stored for the lack of floor space and had to be put on a subsequent sale. He had room to put it in the warehouse and to keep it, but might have to keep it longer to sell it. They usually care for everybody's tobacco when the market is opened. I have seen here in Nashville farmers or growers offer their tobacco for delivery to warehousemen after their floor space was filled and the tobacco had to be stored and kept until floor space was available for the purpose of selling it; I have seen that happen after they carried it to the market but that is according to the condition of the sales. The warehousemen has nothing to do about the time the grower offers the tobacco at his warehouse for sale. The grower brings it in any time he wants to. The general disposition on the part of the growers is to market it just as early as he can and get it out of the way. The closing date for the marketing season is controlled by the tobacco itself. In other words, when the tobacco is practically sold the warehousemen then agree on how many more days they shall be open and they all try to close together on one market together, in a co-operative manner. They all agree to close the same day. As a rule when the crop is about marketed, they all get together and fix the closing date; there is usually some public notice given of that. Where it is found, when they discuss the closing day, that there may be some more tobacco uncured and not ready for the market, some of the markets stay open longer instead of closing immediately, in order to accommodate those growers; I have to carry some of mine off, or did last year, to Douglas. That occurred only in one instance with me. If these skilled men and the warehousemen would stay open for four weeks or five weeks, or twenty-five sales days, and the farmers knew it, they would not be so eager to run over one another to see which one would sell their tobacco first, for the same reason I stated

[fol. 657] this morning with reference to the prices. That is, any good tobacco that is sold on the latter part of the season with the tobacco higher up on the stalk, as a general rule it doesn't bring what it should bring and doesn't bring what tobacco of like nature sold for prior to that time. I have made the statement heretofore that my reason for rushing my tobacco to market is the fact that if I don't get it there I might have to take the same price as the top of the crop. I don't think forty-five days would be necessary for the marketing of the crop. I think twenty-five or thirty days as sales days would be sufficient to market the normal crop of tobacco in Georgia. If the warehousemen said definitely to the growers that they would keep open twenty-five days, I wouldn't labor under that same apprehension and rush my crop to market; I think that would have a very good effect. I know it would on me and I am sure it would on the balance of them. If we had twenty-five days to market this tobacco, it would be marketed in a much more orderly manner than we have now and we would not have everybody rushing and these crowded conditions. I know it would have a good effect on me and I know I will not be by myself. I have marketed on the last day of the season, but that was because I did not have it ready. The experience I got that caused me to think it advisable to rush in and sell my tobacco, was gained mostly from looking at the sales slips and seeing what I got for it. I found that when I delayed marketing until the last of the sales days, that even if I kept my good tobacco grown on the middle of the stalk, I probably got less for it because the others already had been marketed and this tobacco got in the cheaper grades of tobacco. That is just like me buying cotton. If a man comes in and I buy his cotton and if I am giving two or three cents a pound more for a certain grade of cotton, and if I get hold of his cotton and there are some good grades along with some poor, it [fol. 658] will all go in at the cheap price. In many instances, a farmer will bring in his cotton for sale and maybe 300 or 400 pounds of it is good enough for you to pay a cent a pound more than the rest, but with it all together you cannot. If he had it out on a floor I could say that I will pay you more for this pile. When he brings it to the gin I can tell him the same thing then, that I can pay more for this pile I am now fixing to gin than if you put this other cotton with it. It is something like that. The distances I

testified to on my direct examination was not the tobacco belt. I testified to distance from the fartherest east market to the fartherest west market. They grow it beyond the most western market west and that is true of the eastern market east. In fact that applies to all the boundaries. I show on this map the principal tobacco growing counties of Georgia. All counties are not listed on that map that grow some tobacco but all the counties of any size in tobacco growing are on that may I submitted. The counties not shown on the map that produce tobacco produce it in negligible quantities. There are fifteen markets in Georgia. It extends from Statesboro to Pelham. I believe Pelham is the extreme west market and Statesboro is the extreme market in the eastern part. There are no tobacco warehouses engaged in marketing at present at Bainbridge, Thomasville and Albany, and none at Cordele. They have markets at Pelham, Moultrie, Valdosta, Hahira, Tifton, Nashville, Blackshear, Vidalia, Statesboro and Metter, which extend eastward. I haven't received the idea altogether that there are too many tobacco warehouses. I think there are more than are necessary to market the crops under the present conditions. You never know from one year to the next just what the production will be, but I have seen them market 106,000,000 pounds with less warehouses than we have had for the last several years. Personally and officially, as a member of the General Assembly, I know of a way to keep another fellow or busi- [fol. 659] ness from opening up a new market if he wants to.

I would fix his price where there won't be so much money in it, and concentrate the marketing profit. It wouldn't necessarily put Hahira, Adel and possibly Nashville out of business for the sake of Douglas, Moultrie and other larger marketing points. That wouldn't be the effect of it. You take the Tifton market and the Douglas market, with all those warehouses, and yet they cannot market any more tobacco than two sets of buyers can buy daily from nine to five o'clock. If they had forty warehouses in each of those towns, while those buyers in that length of time could not buy any more than is sold now on one day until the next day, and if a warehouse has to wait a week to get a sale, it would just have to sit there and wait until his time came. That expensive crew would be going on just the same, whether they were selling or not. The tobacco warehouseman doesn't have a thing in the world to do with

the number of buyers or the way in which the buyers buy the tobacco. The warehousemen themselves are subordinate or amenable to the buyers. As to the hours that the sale shall go on, that depends not so much on the warehousemen but on the wishes of the buyers and companies. I don't know of any important marketing points, even where they have two sets of buyers, that the sales have not been continued as long as the buyers would stay and purchase tobacco. Even with the full time allowed by the buyers on the Georgia markets and for the sale, they have what they call block sales and have to go back and finish a warehouse the next day. They stop at times in the midst of a sale in a warehouse and continue the sale the next day and complete it and pass on to another warehouse; they finish a warehouse before they quit it. I never owned a tobacco warehouse; I owned an interest, but never owned any warehouse. I have never operated one. I don't know what the tobacco warehouses of the various types [fol. 660] I have described heretofore rent for, any more than just hearsay, and that would not be worth anything. Some rent on a flat basis and some rent on a tonnage basis, is my understanding. I know the rental is high, whether rented on a poundage basis or a flat money basis. As a rule the warehouses do not belong to the operators, and as a rule the rental value is fixed by the owner. The owner is usually a local person or concern. Whatever the rental value fixed or agreed upon may be, it is paid to the owner, whether on a flat basis or poundage basis. Some of them work on commission. They pay them so much based on a commission proposition. No matter what basis the rent is placed on, whatever is paid is passed into the expenses of operation. From general experience in other business, I have got some idea of what the different employees in a tobacco warehouse get and the common laborers get, which go to make up the expense of operations during any given season. One of the items of expense they include in the expenses is the canvassing of the territory served, and I am not agreeing that it should be in there. It has been customary ever since the folks in South Georgia have grown tobacco for market. As to whether it is not unusual for people engaged in any line of business, except the legal business, to solicit customers and trade, I can speak for myself. I am a ginner and operate a warehouse, a cotton

warehouse. I like to get all the business I can, but I do not go to the additional expense of going out to see the folks with promises of one kind or another to get any business at all. I have a competitor in the cotton warehouse business here, one in ten miles and one at Lakeland, nine miles, and the next is at Valdosta. I haven't a competitor in Ray City in the warehouse business nor in the gin business. From both standpoints I am rather fortunate so far as competition is concerned. However there is no room for it here. There wouldn't be half a living for either one. Ray City and the surrounding community is a very [fol. 661] great farming community. I was born and reared right near there, in four miles. I have lived there all my life. I feel like I have a large circle of friends and patrons; I have tried to work for them, I ought to have. I do not employ solicitors to go out and solicit business for my warehouse; I ask people I think may be a customer for business every opportunity I get during the season. I don't entertain the idea that there is anything wrong about an operator of a cotton storage warehouse or a tobacco marketing warehouse soliciting business; I have no objection to the solicitation at all. It is just an item of expense they claim it cost them and I say it is an expense that should not be charged. I have never had any of these inspectors or field men or solicitors that the tobacco warehouses send out to give me any instructions. I paid the demonstrators for instructions years ago. I paid him 10% of the gross I made on the tobacco crop. I was not trying to act smart or anything of that kind but I concluded I could get along without him just about as well as I could with him. About the time I finished the crop, he ran away. When I hired, him, it was because I was an inexperienced grower. While he was serving me, he did not learn me anything about the marketing of tobacco. He happened to run away about the time the crop was completed. He gave me some information about the planting of the beds; I hired him for that and got the information; so far as the marketing of the crop was concerned, I did not gain any information because he was gone. In the conduct of my warehouse business, the cotton is not auctioned off as tobacco is. I merely grade it and it is bought by grade or what some buyer offers for it. It is sold strictly on grade. In the disposition of the cotton stored in my warehouse, I go into com-

petition with the buyers. If they do not give the price for it, I will buy it myself. I have done it a number of times. You know the cotton market is known widely and it is generally known what it is supposed to bring. I know what grade it is. I know how to grade it. If they don't [fol. 662] give the price for it, I will buy it myself and resell it. Tobacco warehousemen do the same thing. When a sale is opened in a tobacco warehouse, the warehouseman is supposed to make the opening bid but numerous times as he talks when he can't get anybody to take it, he bids backwards. I do not do that in a cotton warehouse. In the tobacco warehouse business, the reputable warehousemen precede the buyers and open the bid on a pile of tobacco and then presses the buyer. If the buyers do not run it as high as he thinks the grade and prices justify, he bids backwards. I don't mean that he takes and buys the tobacco himself; I mean sometimes he will bid backwards where the buyer will accept the bid. In that event the buyer gets it. Usually and ordinarily when the warehouseman bids in a pile of tobacco, he gets it. As a general rule I understand he puts it back on the floor and resells it. If on a subsequent sales day, when the warehouseman puts that tobacco on the floor and the tobacco brings less, it is the loss of the warehouseman; he has the same opportunity not to take the bids if he don't want it. If he knows his tobacco and has tobacco judgment, almost invariably he won't lose any money; it will be his gain. He is not taking a chance on it altogether, because it is a somewhat stabilized market; just like a man buying cotton. If he buys good middling cotton at 11½ cents on the market, he is not losing money. I can't tell, in the operation of my cotton warehouse business, what cotton is going to bring ten days from the date; I can in fifteen minutes. I can't tell whether it is going up or down. I don't think the same is true of tobacco; I don't think there is as much fluctuation. The prices of tobacco sold on the floors of the Georgia warehouses fluctuates some, but not as susceptiable as cotton. They do fluctuate. In other words, tobacco that is worth twenty cents this morning, ought to be worth twenty cents this afternoon. Now cotton, I have seen it [fol. 663] fluctuate two cents in one day or even in fifteen minutes. I have observed in the conduct of tobacco warehouses in Georgia and the sale of tobacco in them that

tobacco will bring one price today and a comparatively less price tomorrow; just after the ring leaders come and change the prices. We are not advised what it is until it comes. Forty-five warehouses were in operation in the tobacco belt in Georgia. Forty-five made reports to the Government. My information was it was forty-four, but forty-five made reports. I don't know where the extra house is. The operators of the various tobacco warehouses do not have anything to do with fixing the prices. That is altogether a matter up to the buyers.

Redirect Examination:

I stated on cross examination that the tobacco buyer was the man who lost on the sweepings. As to whether that loss would necessarily enter into the price he would pay for the tobacco as one of the elements that entered into its value, I will state that from a general knowledge of business, you certainly have to add losses to the price for which he bought. The price is determined in all business from the standpoint of the expense and loss. The solicitor who is employed now, is not employed because he knows about the growth and curing of tobacco. I don't recall any preachers that were employed as solicitors. We might have had some Primitive Baptist preachers employed as solicitors by some of the warehouses down here. I did notice that another witness gave the name of a preacher, but I don't know of any. I don't know of any blacksmith that was employed by a warehouseman as solicitor. I know they employed me once and I had not had any experience. I was employed as a solicitor at one time. My duties were to go see the folks and suggest to them where to carry their tobacco, for the best service and the highest price. I don't have any solicitors in the cotton warehouse business. I have [fol. 664] never known of solicitors being used in the cotton warehouse business like they are used in the tobacco warehouse business. My information is that the warehouseman try to work the markets in Georgia, North Carolina, Virginia and Tennessee as nearly as possible along together, so these employees and those engaged in connection with the warehouse business try to open the Georgia market as early as the curing season or the preparation of the Georgia tobacco will permit, on account of hastening up to the other markets. That is for those who are connected with the other market. If the conditions in Georgia in the tobacco busi-

ness and in the warehouse business were such that there was nothing calling the warehousemen and their expert employees and the buyers to other markets, tobacco would not be rushed at the warehouses as it is now. I can substantiate that fact by the statement made by the warehousemen in their testimony, where one said that he marketed as much tobacco in Valdosta on eight sales days as he marketed in North Carolina in two and one-half months. I stated on cross-examination that in my cotton warehouse business I competed with the buyers in buying cotton, and bought cotton if the prices offered were not what I thought they ought to be. I have lost by buying that cotton and reselling it, and I have made. I didn't charge my loss on the buying and selling of cotton as one of the expenses of operating my warehouse. I have read the testimony of the warehousemen in this case. I understand that floor sweepings are credited to what they call the leaf account, and the leaf account is tobacco they buy themselves; and that sometimes the leaf accounts show a loss and sometimes they show a profit, but whatever the sweepings are, they go to help out the leaf account. It is my understanding that the loss on re-sold tobacco is carried in his leaf account, and that the leaf account also carries the sweepings, and that the profit made on the sweepings sets off any loss on the leaf account or re-sales, that is, the profit on the sweepings is credited [fol. 665] to the leaf account to reduce the amount of loss. Whatever the amount was gained as a result of the sweepings would be considered profit, regardless of what account you might charge or credit it to. If the amount of profit on sweepings is reduced by the amount of loss on resales and that is run in his book in estimating the expenses of operation, the loss on re-sales would be charged as an expense of operation. There was a public hearing in the House of Representatives on the adoption of this act, and notice was given of the public hearing by the Agricultural Committee No. 2 of the House of Representatives. There were persons present opposing the bill. Mr. Jim Bowen of Tifton was present in the interest of the Tifton Investment Company, and two gentlemen from Douglas, Ga., but I never did learn their names. My information is that the Tifton Investment Company owns a couple of these warehouses. He said he owned them. There is no law, so far as I know, regulating the cotton warehouse charges. There has been a charge of 50 cents per bale for handling cotton ever since I have been

in the warehouse business, until the Government went to making loans through the farmers, or to the farmers on this cotton. Without any regulation or law the Government itself with one paragraph in the form of notes signed by the borrower on cotton, and on which the warehousemen had to sign as an agreement, the Government did fix the charges or a maximum charge we might charge for that service and storage. That was 25 cents; they cut it 50%. That was 50% reduction. In other words, they did not force us to take that but we were forced to take that if we stored Government cotton. The effect of that forced me; it was to get that or get nothing. The map I have testified about is correct. It shows the markets, the counties in which the markets are located, the number of warehouses in each market, the distance from each market to the other market [fol. 666] as designated by highway maps with reference to mileage. I haven't measured it; I just took those figures from the highway maps. This map was not prepared by my own hands, but it was done at my instance, and it was prepared and I have studied it carefully. It is correct insofar as what is shown on it.

Here counsel for the defendants tendered in evidence the map identified by the witness, J. H. Swindle, which was entered without objection and was marked by the reporter as Defendants' Exhibit No. 1.

Also certified copy of the final consolidated report on tobacco warehouses by the Georgia Department of Agriculture, of the year 1935, showing the tobacco markets, the warehouses and their names in each market and the number of pounds sold first hand, the total value, average price per pound, pounds sold for owners or other warehouses, total value and average price per pound, certified by Garland C. Bagley, Statistician of the Georgia Department of Agriculture, and identified by the witness J. H. Swindle, which copy was admitted without objection and marked Defendants' Exhibit No. 2.

Recross-examination:

I haven't testified to the fact that if the present scale of charges prescribed by the Act of the Georgia Legislature is put into effect, the result will be to reduce the number of markets in Georgia. I am of the opinion that some of the small markets would possibly be swept out. I don't think I testified that the way to eliminate the existence of ware-

houses would be to reduce the price for their services. I think I stated this: I was asked about the building of warehouses; I said the way to keep any more from being built was to inaugurate these prices and then there would not be so much money in it and there would not be any more [fol. 667] building. I said if we did have a four or five weeks selling season that less houses would take care of the tobacco and the business. I did not say that it would reduce the markets, the passage of this bill, but possibly might cut some houses out and save the expense of different crews and that would be a considerable saving. The distance the farmer hauls his tobacco is hardly to be considered. As a general rule now, the soliciting agents and the inducements the farmer gets from warehouses in different sections make them go wherever they want to go. There is tobacco hauled, quite a tonnage of it, from right around my door to Tifton, Georgia, that passes three markets, Hahira, Nashville and Adel, and goes right on to Tifton. If the farmer had to haul his tobacco a longer distance to market it, it would not increase the average cost price of hauling. The average cost for hauling to any of these markets in this section here runs from 15 cents to twenty cents per hundred pounds, and most of it around here is done by truck and would not cost much more to where it would go. Most of it is hauled by truck haulers and they would not receive any more for it. The average farmer does not haul his tobacco. The fact that it takes more gasoline and oil to haul it ten miles than it would to haul it five is the reason some inducements have been offered by these markets where you have to haul it so far. The farmer pays the whole bill for hauling, regardless of who gives the truck driver the money. Warehousemen have discontinued trucking the growers' tobacco since the market closed; not since the last two years they have not.

J. Henry Gaskins, sworn in behalf of defendants, testified as follows:

Direct examination:

I am a resident of Berrien County. I have lived in that county all my life. I am forty-five years old. I am en- [fol. 668] gaged in the business of farming and naval stores.

I own property in this county; own some farm property, land, stock and some city property here in Nashville, Georgia. I am a grower of tobacco. I was one of the first men in Georgia to grow tobacco in this section, in the tobacco growing section of Georgia. I would have to look at the records that I have in my business to state how many years that has been. It must have been along about 1917 or 1918, something like that. It is my recollection that I have been growing, curing and marketing tobacco something like 17 years. I hauled it to Douglas for two years before the market was established down here. Having started tobacco growing when it was first started in Georgia and having been in it continuously since that time, I am reasonably familiar with the development of the tobacco industry in Georgia. I am familiar with the development of the warehouse business in Georgia just as an outsider. I am not actually engaged in it, but I am familiar with the general conditions leading up to the development of it. From the very inception of the tobacco industry in Georgia, it has been dominated and the policies largely shaped by warehousemen from the old tobacco belts of North Carolina, Tennessee, Kentucky and the other old belts. The manner and method in which the tobacco in Georgia is marketed, the length of the season and all things concerning the marketing and selling of tobacco has been brought about largely to begin with from the influence of demonstrators. The marketing is practically controlled here by out of state people, engaged in the operation of tobacco warehouses. So far as the length of the season, the method and manner of marketing on the part of the tobacco farmers of Georgia, that has been shaped by the people from the old tobacco belt now engaged in the warehouse business in Georgia; the farmers market it in such shape and condition as suit the warehousemen. When the tobacco industry first started [fol. 669] off in Georgia, it was necessary to employ demonstrators or people to assist the farmers and teach them how to grow and cure tobacco for market. It would depend on the intelligence of the grower and the knowledge of the demonstrator as to how long it was necessary to employ those demonstrators in that line of activity. The practice of employing demonstrators generally by the people continued only for a short period of time. The practice of employing demonstrators is not now customary in the tobacco belt of Georgia. That practice has been discontinued for a

number of years in this section. I have not known of any demonstrators in this section here for a period of ten to twelve years. It was discontinued because it was unnecessary and expensive. It was because the average farmer had acquired a sufficient knowledge of how to grow and cure tobacco; the last demonstrators that we employed in this section, from the old tobacco belts, the average farmer, knowing this soil, conditions, etc., would quickly become better qualified to grow and cure tobacco here than the demonstrator. When demonstrators were employed for the purposes described, the farmers paid them. Berrien County has a farm demonstration agent or county agent employed by the county. The services of the demonstration agent are available to those farmers who need information about growing and curing tobacco. The farmers of Berrien County support the payment of the service of that demonstration agent by payment of taxes into the county treasurer. In my section and in my growing of tobacco, demonstrators employed by the warehousemen to teach the farmers how to grow or cure tobacco for market are more in my way than they are a good. They do more damage than good. I am familiar in a general way with the farmers in Berrien County and those surrounding the Nashville market. They utilize the services of the warehousemen in marketing the crop of tobacco. In preparing and growing and curing they utilize practically none or any of it in [fol. 670] growing it. If the tobacco warehousemen charge the farmers as a part of his warehouse charges for the services of so-called demonstrators or solicitors engaged in demonstration work, I am unable to say whether the farmer would get any benefit from it or not. My observation is that the demonstration work is merely a method to get acquainted and to get in touch with people who market tobacco, for the purpose of solicitation and influencing the growers as to where they market their tobacco. If the farmer is charged for that by the warehousemen in his warehouse charges, in my opinion it would be a charge that would be absolutely unnecessary. I cannot see where the tobacco growers of the Georgia belt get any benefit from the solicitors as they go about over the territory for the warehousemen, and that includes the warehouse operators, auctioneers and employees that come ahead of the season. In my territory you generally find them at the tobacco barn where the best looking women are and where the

biggest times are to be had; that's in my territory. In the curing of tobacco, it requires sitting up all nights, and it requires on the part of tobacco growers pressing into service their wives and daughters or kin-folks for employees. Insofar as the charge that is made against the tobacco grower and insofar as the charge that is made against the grower for warehousing his tobacco and for the expenses of solicitation through solicitors, from my observation it is an unnecessary and an unfair charge. From the tobacco growers' viewpoint I would say it was not a fair charge for the warehousemen to charge warehouse charges that include donations to churches, schools, chambers of commerce and like donations, and each and every man running a business should want to discount every bit of expense possible. In the best of my judgment it is not a reasonable and fair charge against the tobacco grower to charge him with an expense [fol. 671] for information he is supposed to be furnished by farmers, preachers, blacksmiths and other local people and for their influence in getting tobacco to the warehouses. I am familiar with the charges previously made by the warehousemen for marketing tobacco before the law was passed. I will say that those charges were not fair and will give my reason for it. In checking over a list of the costs of warehouses, I have figured on buying a warehouse and buying stock in it at various times, and I have had occasion to check over the cost of warehousing and an itemized statement of the cost of warehouses and expense of operation and profit received therefrom. Before introducing this bill into the Senate of Georgia, I obtained a statement of tobacco warehouses from various sections and studied them as to the profit and expense, and am reasonably well familiar with the expense and operation of a warehouse from statements furnished. I will say that they were very unreasonable and unfair to the farmer. Taking the profit of the farmers and the general business conditions and general business profit and property of the farmers and the warehouse, and taking the profits from them into consideration and comparing them, they were unreasonable. From the statements furnished by various warehouses and from my knowledge of city property and farming property generally, the charges in the bill passed by the last General Assembly is reasonable and would give a higher profit on investment than any ordinary average business enterprise I know of around here. Before I introduced this bill, A. W. Gaskins was

the owner of two warehouses here, and I went over the scale for a period of years with him and checked out the lease here and then I went to Dr. Askew and he went over expenses and receipts with me for a period of years, and they agreed with me that the farmers were justified in a reduction and gave their consent to my introducing this bill in the Senate, and they have approved it and stand by that measure up until this time. I made an investigation cov- [fol. 672] ering a period of years of the local warehouses in Nashville. Dr. Askew is still interested in a warehouse and joint operator, silent partner; I won't say whether the A. W. Gaskins Estate is or not now, but it has been and at the same time he was figuring with me he was joint operator and was really an operator, but was only operating through another party at the time.

I have served in the Georgia House of Representatives for Berrien County. I am at the present time a member of the Georgia State Senate from the Sixth Senatorial District, composed of Berrien, Cook, Lanier, Echols and Lowndes Counties. I went about among the people and farmers and tobacco growers generally in making myself familiar with their attitude toward these charges, these warehouse charges. I have never heard a single farmer say he was satisfied with the old line of charges, the old scale of charges. I have heard numbers and numbers of farmers say they were not satisfied, but never heard a single farmer say the old scale of charges was reasonable and fair. This legislation was introduced and sponsored by myself in the Senate and Mr. Swindle in the House, and so far as my part of it is concerned, I did it at the instance of the people I represented as Senator from the Sixth District. It was as a result of a demand on the part of the growers for relief. In 1933, in the House of Representatives I prepared, while I was in the House of Representatives, or assisted in the preparation of this bill. The views of the Senate were so much different from the House at that time until it was my honest opinion you could not get it through the Senate. When I went to the Senate, I made this promise numbers of times. I told them that if they would send me to the Senate that I would get the tobacco bill through or raise enough hell to know why I didn't. That was in response to the demand from the growers for relief. The tobacco warehouse

business in Georgia is not more hazardous then the growing [fol. 673] of tobacco, only on a larger scale. The tobacco growers have to undergo and resist in the curing and growing of a crop of tobacco, storm, drouth, disease and wet weather and a number of conditions which are unfavorable conditions to the production of his crop, from time to time. The tobacco warehousing business is subject to nothing like as many hazards as growing tobacco. The investment in growing a tobacco crop is large in proportion to other crops in this section. As per amount of profit received, it would be much larger. In making a tobacco crop the first thing in the way of investment is the land to grow it on, then the fertilizer and stock to cultivate it with, tools, labor and seed. In the curing there are barns, packing houses, etc. It is an unusually expensive crop, in proportion of the poundage of tobacco. The aggregate value of the land, stock, labor, barns, seed, and all that goes into a tobacco crop in the tobacco belt in many times more than the total that is invested in warehouses and equipment necessary to operate the warehouse. The investment in warehouses in the tobacco belt in Georgia is only a small percentage of the investment in the tobacco industry in Georgia. That would be true specifically as compared with the amount invested and the capital and money used in growing and curing the crop of tobacco as compared with the investment and capital and money used in connection with the warehousing and sale of the tobacco. I would not think the tobacco warehouse business is any more hazardous in the Georgia belt than the naval stores business. I would have to check the investment necessary to handling a naval stores business before I could compare that with the tobacco warehouse business. It is my opinion, just checking it over in my mind that in investments they would run along close together, the investment for handling the same amount of [fol. 674] business. From my investigation with reference to the operation of the warehouse business in Georgia over the past period of years that I have testified about, under the new scale of charges the profits in the tobacco warehouse business would be much larger than the profits to the growers in proportion to investment, or in either the naval stores business. I own city property here in Nashville. The nature of that property is a brick store building. As to what the tobacco warehouses rent for in Nashville, I

have checked those things as a whole in checking the cost, expenses and profits of warehouses, but as to individual warehouses I would not remember just what they were. The warehouses in Nashville, in proportion to investment, bring a considerably higher return on investment than they realize in rent on investment from other business property. They bring here very much higher return. Tobacco warehouses for this year, and you can take it for a period of years in our town, have paid considerable profits, the majority of them. I think a year or two they showed a loss, but taking them on a whole, they have made considerable profit. Since 1930 other city property in town, the majority of the other city property has not more than paid insurance, paving assessments and taxes with very little left over and sometimes not paid that. It has been a liability instead of an asset, city property has in this town for a period of years. According to the statements furnished and the records of the warehouses and profits shown, the warehouses would show a larger profit under the new scale of charges fixed by the Legislature, than any ordinary business I know of in this section. To the best of my knowledge and belief the tobacco warehouse business in the Georgia belt is a monopoly, and for this reason I will say that they can close their doors at any time they wish to and shut off the marketing of tobacco, compelling the growers to take it to a far market, and the nature of the business and the [fol. 675] nature of the operations in my judgment would constitute a monopoly. It is not possible for a tobacco grower to sell his tobacco on the Georgia tobacco market except through the warehouses in Georgia. There are no buyers available to buy his tobacco except on the warehouse floors, only this way: Sometimes the warehousemen go out and pick a real good crop of tobacco that some fellow has, not too large a crop of choice tobacco and buy it and pay good prices for it at what we call acreage. I mean he will buy this crop out in the open or what we call pin hooking, and before it is put on the warehouse floor. Then he will bring it in and put it on the floor and lots of times put it on the floor in some grower's name and sell it for the effect it will have on solicitation of tobacco to his warehouse, and that will bring up the average price and may have other favorable effects on his business at the time. That would be an isolated individual transaction. There is no other open

market to the general tobacco grower where he can sell his tobacco except to the buyers on the warehouse floors. The tobacco farmer hasn't any chance, if he wishes, to sell his tobacco except to the warehouses to be sold at auction to the buyers, that I know of. From the point of convenience, public convenience or the convenience of the tobacco growers in Georgia for marketing their crop, I don't think it is necessary for there to be as many warehouses as now exist in the Georgia belt. The number of warehouses we have now is not absolutely necessary, and I give the following reason: the crop has been handled in the Georgia tobacco belt with considerably less warehouses and just as satisfactory or even more so than it is handled at the present time, with a considerable more volume of patronage. In the marketing of the tobacco crop in Georgia, there is only just so much tobacco to be warehoused in a given season, just so much poundage available to be taken to the warehouses; it is what the growers make. If the warehousemen did not send [fol. 676] out these solicitors to solicit, the warehousemen would receive their tonnage according to the service they rendered instead of according to the luck they might have in solicitation. By reason of these solicitations previous to the opening of the tobacco market, the Georgia growers are induced, in many instances, to carry their tobacco to distant points rather than to their normal market. In such instances as I have traced and noticed, the growers are injured in the majority of cases. From my experience in growing and selling tobacco and my knowledge gained from my experience in selling it in the Georgia belt, I cannot see where the growers would get any benefit out of the solicitation that the warehousemen engages in and that enters into his charge against the grower. I would consider it detrimental for this reason: in my experience and contact with the solicitors and my knowledge of them, where they have solicited crops on my farm and in other places and taking it up with the growers, they bring pressure on the growers that have an unusually good crop and if his tobacco grades up good all the way, then they bring considerable pressure and use every bit of influence they have got to bring this tobacco on a certain market for a certain warehouse. That tobacco will bring a very much better price than the average tobacco, being an unusually good grade and will influence considerable quantities of tobacco to follow this tobacco when the

prices would not come anything in line with the tobacco they are really following to the market because of the effects of the better price of the tobacco that has been solicited from that section. From my knowledge of the effects of the solicitation, the warehousemen use what would commonly be termed as a bait to a given community to induce the tobacco from that community out of its normal market into a distant market. Tobacco warehouses do that, and that is true about any business that has an unusually good profit. [fol. 677] If tobacco warehouse operations offer an unusually good profit, the more profit there is to the business the more solicitation and the more competition there is in that special line of business.

I would not be able to answer as well as some of the boys, whether the warehouses during the period they have operated engaged in the practice of hauling the farmers' tobacco to market, but I would say that they have hauled some of the tobacco off my farm in years passed. They have hauled some of it off free, some of the tobacco off my farm without any charge at all. For the last several years I have forbidden my farmers to let anybody haul tobacco because I figure that it is not good business policy and don't pay in the long run and I stopped them. When the tobacco warehousemen were engaged in hauling the farmers' tobacco, it was covered by the farmers in the long run in excessive charges, The farmer paid the bill. The hauling they engaged in, at the time they engaged in it, it was an expense to the warehouseman. Since the warehousemen have discontinued that service to the farmers and that expense, they have not reduced their charges; and they have not discontinued hauling it. They still haul it for reduced prices, for prices no outsider could haul it for, negligible prices. The past five years, from 1930 to the present time, has been several years of the hardest business I have ever known. During the last five year period no line of business has experienced a normal operation, until this year. Some lines have experienced a fairly normal business this year. I would say that 1935 was at least a normal year or probably above normal, to judge the tobacco warehouse business by. I would have to refer back to my records to say whether 1935 was as good a year as 1925 or 1936, but 1929 was a much better year with us than 1935. Judging from recollections, I would think the five year period from

1925 to 1930 would be more nearly a normal five year period than the five year period from 1930 to 1935. My observa-
[fol. 678] tion is it has been harder on the majority of the other lines of business. I can give the reasons for this. The volume of pounds, —if they get the volume of pounds, the cheap prices don't affect auction fees and weighing charges in tobacco warehouses. The only thing the cheap prices on tobacco effect is the 2½% commission charges; but the weighing charges and the auction fees are the same regardless of whether tobacco brings 40¢ a pound or whether it brings 1¢ a pound. In that manner the tobacco warehousemen are protected doubly against an abnormal year. It strikes me that 1931 and 1932 were the two worst years, and during those years the majority of the tobacco in this section here sold below the cost of production. My recollection is that in 1933 a large per cent sold below the cost of production. In 1934 in some cases it sold below the cost of production and in some cases profit was made on it. So far as real profit is concerned, taking the whole farming operation in consideration, I would say that farms operated at a loss in 1934, but the poundage was larger and that made the percent of production cost smaller. In 1935, in the majority of cases, tobacco was produced at a profit. In the five year period, from 1930 to 1935, the tobacco farmer for the majority of those years sold his tobacco at a loss, in the majority of the cases. In 1931, 1932 and 1933, there were lots of crops of tobacco grown in this section where the warehouse charges ranged anywhere from ten to sixty per cent of it, and in some individual sales the warehouse charges went more than the whole sale of tobacco or than the whole load of tobacco would bring. That was due to the fact that the auction and weighing and handling fees were a fixed charge regardless of price. I have had occasion to observe the living conditions in which the warehousemen have been enabled to live as a result of the profits in opera-
[fol. 679] tion of the warehouses and also the conditions in which the growers were forced to live with respect to their growing and curing of tobacco for market. As a contrast between the living conditions of the two, the majority of the growers that grew this tobacco for the period from 1930, including 1930 and up to 1934, and in lots of instances the growers of 1934, the majority of the farmers are ragged and were short of clothes during this depression and their fences were broken, rotten and down and to a large extent

their mules are in bad condition, houses in bad repair; and the warehousemen and their skilled help, as they describe it, stay in the best hotels, wear better clothes than the majority of the growers can muster up on Sunday, for every day. There are no comparisons between the living standards and the amount of money expended by the two groups of people. The majority of the farmers or growers ride in wagons, old wagons with the tires about gone or ride around in Hoover carts. That is a cart made out of two wheels off of an old automobile. The majority of the tobacco warehousemen and their skilled hired help, as they describe them, ride by in automobiles and drive them at high rates of speed at what we country people usually call reckless. Taking it as a whole, the majority of the growers' recreation is mighty limited. Any recreation for them or their families is mighty limited. If they go fishing occasionally at some place near by and get to go to town occasionally, it is all right. These warehouse operators expend a great deal in expenses, having barbecues prepared for them. Some of my help on my farm has been hired to prepare big barbecues for them. The majority of them are constantly out hunting in my section. Some of them has bought high price bird dogs, when the tobacco grower can hardly buy enough of the necessities of life; and they spend money reckless for things that would be classed by the usual tobacco grower as really unnecessary. From the rate of wage [fol. 680] paid by the warehousemen to their skilled help that they bring here to run the sales, the wage that enables them to live in this luxurious manner, I would answer whether or not I thought the rate of wage and the salaries paid was excessive and extravagant in this way: that if the average tobacco grower spent money as recklessly and with as little consideration as the warehousemen and skilled labor that have operated the warehouses in this town,—that if he spent money that reckless, he could not operate. I will change that by saying this: he could not get money to spend that way. If he had enough money to spend that reckless, he could not last any time in the farming business and tobacco growing business. I do know this about the sweepings off the floor of the tobacco warehous-. From time to time I have had occasion to be on the warehouse floors and watch them clean up and getting the sweepings. Now, of the sweepings on the floor, where there is good tobacco that falls off and is swept up on the floor, it is graded

out and put on baskets and sold and they have some of as good tobacco as there is put on the floor during the sales in these sweepings; and brings as good price as any tobacco sold on the floor; and this best grade of tobacco is graded out and put on the floor and re-sold. As to the night labor, they have a good many people off my farm that work for the tobacco warehousemen from time to time. Some of those boys during this season would work as small an amount of time as one and one-half or two hours and be cut off and other boys would be put on from time to time. The labor was shifted from time to time as would give the warehousemen the most influence in soliciting tobacco through hired help.

Cross-examination:

I never did operate a tobacco warehouse, and I was never employed in connection with the operation of one.

[fol. 681] Redirect examination:

Very few of these warehousemen have never grown tobacco down here.

Recross-examination:

I don't know how much they have grown in other tobacco belts, but their knowledge of the general condition about growing tobacco here would indicate they had grown very little.

J. H. SWINDLE, recalled as a witness for defendants, testified as follows:

Direct examination:

I have not figured the amount of warehouse charges, the total amount of warehouse charges taken in by the warehouses in Georgia in 1935 on the basis of the reported size of the crop, something over seventy million pounds, except on a basis of what it cost me for my tobacco. On a percentage basis, it cost me approximately 4.90, to be accurate 4.83, of one hundred per cent of the entire gross sales, per pound. I have figured how much per pound, as an average, the warehousemen gets for marketing tobacco and on that basis how much he will have taken in this year. The total

amount is approximately $700,000 and my average would be very near the market, for this reason. My average was 19.14 per pound for 1935; 19.14 per pound for my crop. The average for the entire state was 18.91, so my cost price would figure within a very few dollars of the average cost of the state. Mine is a little less because my average is higher. Figuring on the basis of what they got out of me this year from the marketing of my tobacco, the total amount they received in 1935 would be something over $700,000 from charges.

[fol. 682] P. M. SHULTZ, sworn in behalf of the Defendants, testified as follows:

Direct examination:

I live at Ray City, Georgia. I have worked in tobacco warehouses as weigh master and then I worked in a warehouse this past season, the season of 1935, with the Government. In 1935 my official position during the market in 1935, was assistant field agent. I was known to the warehouse and the people around as warrant clerk. I was not designated in a particular warehouse; I was assigned to the Nashville market. I worked in all three of them some. To the best of my knowledge I could not say whether there were any extra employees employed in the office this year of the warehouses because of the Government regulations and the injunction which was filed. On the last market they might have had a little bit more work to be done in regard to allotments cards. They began to run out at the last of the market. We warrant clerks were not permitted to issue warrants except for the number of pounds their allotment cards called for. If the bill that was presented to us for a warrant was greater than the poundage shown on their cards, we were not permitted to write warrants for anything except the amount shown on the card. Then if the bill was greater we had to turn it down and the bill was sent back then and was known as what they call a split bill, and the poundage that showed on the card was then shown in a separate bill and on another bill was shown the balance, which I presume was taken care of later on. Now I cannot state whether or not they would have had to employ an extra man for that. We did have in there on the last part of the season a split bill man that did that work; that was

in all of the warehouses here. The extra man in each warehouse was taken care of by the warehouse itself. Some would use some of the same warehousemen that had been working in there who did that for us. It would take some [fol. 683] time, maybe ten or fifteen minutes, I don't mean that an extra man was employed in Nashville by all the warehouses and he performed those services for all the warehouses and his salary was paid by all the warehouses. As I explained, I don't know whether they employed extra men, or not. I know some of the warehousemen used some of the men already working. That was handled by each of the warehouses. As I explained about the bills, they had the poundage listed on the allotment cards and when the bills came in, we were not allowed to write out a warrant except for what was shown on the card. If there was more, that bill had to be changed from one bill and had to be made out in two bills. It took that much more clerical work there. That was on the last of the season when the cards began to run out. I should say it was the last week, and some, of course, according to how much they had sold, when the poundage on the allotment card began to run out. It was in August of this year. Some of them might have been prior to the last week, but the last week was most of it. I would not think the three warehouses in Nashville had a larger clerical force this year than they ordinarily have. I never worked in warehouses heretofore at Nashville. I worked in warehouses at Tifton as a weigh master, but never worked in the warehouses here before this year, and I was working then with the Government. I cannot state the exact number of clerical men the Union Warehouse had because I did not work very many days there, except on the rush season. I did the biggest warehouse work at the Planters and Independent Warehouses. On general work at the Planters Warehouse there were three Government employees, two warrant clerks and a seed loan man. They were not paid by the warehousement, and I wouldn't think that was an expense to the warehousemen. Then there was a billing clerk who figured the warehouse charges first. The bills came from the billing clerk to us and from there went [fol. 684] to the bookkeeper and from there to the paymaster. Those were the warehouse employees, taking Planters for example. There were three regular ones that worked in line with me in the office. If the Planters Warehouse employed any extra men in its office this year on ac-

count of the part the Government was taking in the warehouse business, I could not tell it. If it did, I do not know. I would not say whether anybody was there or had to be employed for any such. So far as I could tell there was nobody employed and paid by the warehouse that would not have been employed if the Government had not been taking an active part in the tobacco industry; I would not think so. There were three Government employees; they were paid by the Government. The two warrant clerks worked together and then there was the seed loan man. All three were paid by the Government.

Cross-examination:

The necessity of complying with the order of the court granted in this case imposed upon the office force of each warehouse a great deal of additional work. Of course there would be some little more work attached to it. For instance, the bookkeeper kept an account, had to keep an itemized account of the old charges and the new charges, and the pay master that issued the checks collected the Government tax. Those were not Government employees. The billing clerk figures the charges according to both rates, the old rates and the new, and the bookkeeper sets them down. Whoever figured the charges had to figure them first according to the rate in force prior to the passage of the Act of the Legislature now under attack, and also had to figure the charges in accordance with the provisions of that Act. To that extent there was a duplication or double work. I don't know whether it was twice as much as if the Act was not in effect or not, because in figuring poundage [fol. 685] and everything—this is just on the gross sales is where they were figuring them from. They figured the new charges and the old charges and the bookkeeper set each down on the book. That was that much additional work in the office, of course. The billing clerk didn't pass the bill on to the bookkeeper; it came from that clerk to the warrant clerk and then the seed loan man before it got to the bookkeeper. When it finally got to the bookkeeper, he put down the gross sales, the new warehouse charges and the old warehouse charges. That was a duplication of work; he had to keep the new warehouse charges and the old charges. It went from there to the paymaster. I would not think there were any additional duties for him to per-

form in connection with his employment as paymaster because of the necessity of complying with the court order, because he paid off according to the new charges. I never had occasion to work directly in the office of a tobacco warehouse. I worked as weigh master, which is indirectly connected with the office. I have never operated a warehouse. I didn't have occasion to visit B. B. Saunder's warehouse during the last selling season. I don't know how many employees he had in the office this season, nor how many he had in any other season. I can't state how much business he did at his warehouse. I have been in his warehouse, but not during the operation of the marketing unless I was just passing through. I don't know how much tobacco he sells each season. I would not be in position to state that he probably sells more than any other warehouseman in Georgia; don't know what he sells, more than any other warehouse in Georgia. I don't know the poundage he handles. During the 1935 marketing season it became necessary for the billing clerk to give the farmer a duplicate bill. Sometimes duplicate bills were issued. For instance, a duplicate bill was issued when they ran out of poundage on their allotment cards and they could not sell at that time all that was on that bill. They sold and got a warrant for [fol. 686] that part which was on their card and the other was left off. If the farmer asked for a duplicate bill to be taken up so he could get more allotment, he was issued a duplicate bill.

Redirect examination:

The employees in the Planters Warehouse had to figure the total poundage. The bills came from the billing clerk to either me or my assistant that was helping me. The total poundage gross sales, net sales, and the new charges and the old charges were figured. The only additional items on that was the new charges. That was first done by the same man that put down the others.

W. W. Turner, sworn in behalf of Defendants, testified as follows:

Direct examination:

I live at Nashville, Georgia. Have lived there about four and a half years. I am receiver of the estate of A. W.

Gaskins. After his death, about the 1st of January, a receiver was appointed in lieu of an administrator. I am the only receiver. The estate owns warehouse property in Nashville; they own three warehouses, one cotton and two tobacco warehouses. One was known as the Planters Warehouse this year and last year, and the other was the Independent. They are not both the same size. The old Brown Warehouse, or Independent Warehouse, is possibly one-third as large as the other again. That is what is called the Independent Warehouse; it is about one-third larger than the Planters Warehouse. It is of metal construction with a fabrikoid roof; fabric roof. That is true of both of them. Since I have been receiver, I have rented those warehouses to tobacco warehousemen. In 1935 I got $3500 rent from the Planters Warehouse, and got $3500 from the Independent. That was $7000 for the two. In 1934 it was during Mr. Gaskins lifetime, and the exact rent he got for [fol. 687] each I don't know. $2500 for one and $3000 for the other approximately. The rent last year was on a commission basis. The other year, however, was on a flat rate. I don't recall what rent was paid for those warehouses, but I do know the rent scale has varied from $1500 up to last year's. I have been receiver only for the year they paid $3500 apiece. I didn't say I had been receiver for four and one-half years; I said that I had lived here that long. I do know about the rent back for the past several years. The Planters Warehouse is approximately twelve or fourteen years old, both of them about the same age. The construction is corrugated metal, with ordinary roofing material, iron clad. It is a very cheap construction and not of a permanent character. It requires a good deal of repairing. According to my estimate on the books of the estate, the value of the Planters Warehouse at the present time is about $20,000. The inventory return on them was estimated at $20,000. That is the inventory I made as receiver of the properties that came into my possession. The estate of A. W. Gaskins has other rental property in Nashville, but very little of that kind. It is mostly private homes and things of that type. I am familiar with the store buildings and other buildings in Nashville that are rented. The total sum I obtained from the tobacco warehouses I mentioned, is considerably more than I received as rental from other rental properties in Nashville since 1930, but the upkeep is

more on the warehouses, of course. The warehouses are of rather flimsy construction, and require considerable upkeep, especially the roofs. Naturally a brick warehouse, with a permanent iron clad roof would not require as much upkeep. I have noticed the selling and marketing of tobacco in this county, but I have been connected with it only for a year. From my connection with the warehouse business, and having observed the operation of warehouses, I will state that [fol. 688] the employment of solicitors as it is done in this community is of no value to the farmers; it does not help the farmer, could not help him. I am familiar with that custom. I don't know whether it could be classified as a custom or not, but some warehousemen do hire men to solicit the farmers to bring tobacco to their warehouses. As a rule they hire men that are capable of having influence over the farmers in their section. As a rule they are growers of tobacco themselves. We do not have a great deal of hauling of certain farmer's tobacco to the warehouses and the warehousemen paying for the hauling, in this community. We have had practically none, because our nearest biggest market is Tifton and they are the ones that usually hauled from here. It has been hauled from here to other communities, not so much into this section. I can't say definitely that the warehousemen in Tifton *in Tifton* paid for the hauling, for a farmer has been supposed to pay directly, but in a way I imagine the warehousemen must have paid for the hauling. The average price paid for tobacco in the Nashville market in 1935 compared with the rest of the markets. In fact we lead the market for the amount of tobacco sold. For the number of weeks open and tobacco sold, we were at the top. I know of one case where tobacco which naturally would have come to Nashville went to Tifton in 1935 and was hauled. I imagine there were others, but there are some others who would know about that personally; I know of one case. I don't know why the season is so short in Georgia as compared with North Carolina or other markets, except we market our tobacco first and the other markets come right behind ours and almost on our heels and they seem to get in a hurry. The warehousemen and the men who help operate warehouses and come within them from North Carolina when the season ends in Georgia go to the other markets. They are gone immediately after the market closes; they

[fol. 689] leave immediately. The lease on the Planters and the Independent Warehouses is for six weeks. After that time the possession and disposition of the warehouse is returned to the owner. After that one of them is used very little. The other is used for storing excess supplies, equipment, wagons and tools, and corn and peanuts, in the operation of the properties of the estate. The cotton warehouse is also rented. It is probably one tenth the size of the other warehouses. It is the smallest one. It is a brick warehouse with a metal roof. It is valued at about $7000. We have been renting it to the Government for cotton storage. Prior to the time the Government got interested in these matters, we used it for practically the same thing. I did not use it at all at that time because I was not in possession. Mr. Gaskins bought cotton and stored it and stored it for rent, as a private business. I am not familiar with it being rented for a cotton warehouse to be operated as such. It is not rented this year; it was last year 1934-1935 to the Government for a cotton warehouse. We got about $1200 rent for it last year. I don't remember about the year before. Since the receivership I have had occasion to observe pretty closely the operation of the tobacco warehouses that I rented. In my opinion the warehousemen operate the warehouses most extravagantly. I don't know of any other successful business that is operated as extravagantly as the warehouses are. Just to be frank about it, I feel that the salaries paid in the operation of tobacco warehouses are entirely too high, because the men are working more than one month out of the year, and while it might be possible that some of them do not, most of them are working nearly every month by going into other markets. There is a waste of tobacco on the floors to a certain extent, a loss there that could be prevented. There are a number of accusations of stealing tobacco and the warehousemen have to pay for that and with a little more cau-
[fol. 690] tion they could prevent it. There are a number of small things that could be done which would make it mean more to the warehousemen. I don't think the employment of solicitors is worth anything to them—it is worth something to them, there is no question about it. If you can hire a man to bring in more tobacco and they do it, that is naturally worth something. I know what the Planter's Warehouse paid to its auctioneer this year. They

paid $900. The auctioneer at the other warehouse was paid around $900. He stayed there a bit over three weeks. I don't know of any other class of business men engaged in similar business or occupation to that who make that much money in this community or part of the world. I guess there are men who make $1000 a month in other businesses, but not in this community. Not that much without any investment, and on his labor alone. I can't state from my knowledge any man who is employed or was employed during this year in this section who made as much as $900 for three weeks' work. Mr. Brown, of the Planters Warehouse, paid his bookkeepers $75 a week. He worked practically four weeks. I don't know positively about the clip men. I don't know of any other employees they brought with them down here and so called experts. I cannot name it. I could have known it all if I had known it was wanted. My wife worked in the office and she assisted the bookkeeper, and that's why I know those. The tobacco wasted on the floor at the Planters Warehouse during this past season and gathered up by the warehouseman and appropriated to himself will run into a large sum of money. It is the custom for the warehousemen to take the wastage on the floor. He appropriates that to himself as part of his profits. I know what profit the operator of the Planters Warehouse made on his operations this year. His profit was practically $2000. That does not include the amount deposited with the Clerk in Macon. $3200 and some odd dollars was de- [fol. 691] posited with the Clerk, making something over $5000, for a little less than a month's operation.

Cross-examination:

I am a practicing physician. I don't own any warehouses myself, individually. I have never operated one. My only knowledge is by reason of the fact that I am receiver of these properties. In comparing the tobacco warehouse business with the operation of all other warehouses, it has been extravagantly operated, and on any other basis it is highly extravagant. I don't know of any warehouse in Nashville that runs any more extravagantly than any in Tifton; I am not saying that, and the only ones I am familiar with are those in this town, and it seems to me it is an extravagant business. Running a store is more extravagant than practicing medicine or law, so far

as investment and overhead goes. Some businesses are naturally more extravagant than some other sorts. My statements in regard to this warehouse business—I am not showing any partiality one way or the other. So far as the estate is concerned, we will lose in one way should the old rates be established, and we will lose in another way should the new ones be established. I am just giving my opinion of some things I know and some things I think. I don't get any from this warehouse property other than the tobacco warehouse rent, except for using them for storing our supplies. No additional rent is paid me and they stand idle eleven months out of the year practically.

L. B. Moore, sworn in behalf of the Defendants, testified as follows:

Direct examination:

I live two miles from Nashville, Georgia. My business is farming, over-seer. I work for the estate of A. W. Gaskins. It is a very large estate. The estate owns a great number of farms and property in town; it owns some tobacco warehouses and a cotton warehouse. It owns other city prop-
[fol. 692] erty besides warehouses. I have been operating the farms of the A. W. Gaskins estate three years. Prior to that time I lived in Cook County. That is the county next to Berrien. I was farming then. I have raised tobacco for about fourteen or fifteen years; that goes back to 1920. I sold all the tobacco I have ever made at Nashville with the exception of two years. I sold that at Adel. That is not very far from Nashville. I haven't had any connection with the tobacco warehouse business during that period any more than working for them. I worked for them about twelve or thirteen years. Most of the time during that period I worked for Mr. F. W. Brown. He operated Brown's Warehouse at that time; that is the Independent Warehouse this year, in Nashville. I worked for Mr. Brown in what was known as Brown's Warehouse nine years, I think. I wouldn't be exact about having started fourteen years ago, but I worked with him the first year he was in Nashville. I demonstrated tobacco and generally my associates had anywhere from two hundred to seven

hundred acres under my instructions, and when I was working for him we really sold in his house. In demonstrating tobacco, I showed the farmers how to plant and grow and cure their tobacco. They were different farmers. I wasn't paid by Mr. Brown for the demonstrating. Part of the time I worked on commission and part of the time I worked on salary. The farmers paid me this commission. I was not working for Mr. Brown in that activity. I was hired to sell through his house and help him on the sales end. During those years I was hired by him to see that these farmers that I made a contract with sold through his house. He paid me a salary of anywhere from $300 to $500 for that work. We generally started this demonstration work along in November and December, and we went up after the tobacco market was over. That was November or December of the preceding year during which the crop was raised. I was farming at that time also. I gave all my time to demonstration, except for looking after my [fol. 693] own. I had that privilege. After the warehouse opened, if I was not busy with my tobacco and if a farmer was not satisfied with the sales that he made, if he was entitled to any adjustment, I made it. That was for the farmers for whom I demonstrated and others, all farmers. In the event his tobacco sold below the market according to my judgment, I gave him the market for it and charged it to the warehouse, and many times I would re-sell it; that is, run it around and sell it twice the same day. I was working for Mr. Brown in doing that. If a farmer was dissatisfied with the price he got in the Brown Warehouse, I adjusted the matter with him, and if necessary paid him more than he got up to the market price. That was charged as an expense in the warehouse. That is done very little now. To a certain extent it is still done. The practice of paying the farmer to satisfy him in regard to the difference between the amount he received and what is considered its market value, and then charging that as an expense of the warehouse is not done as much as it used to be, although he has a man that follows the sales. It is his job to try to satisfy the farmer. They generally re-sell it now. Sometimes the tobacco warehousemen will re-sell it. If the resale of it brings as much as the market price, he let's it go. If it does not, he still tries to adjust it to suit the farmer. Of course the purpose of that is that he wants a satisfied customer and would like for him to have the market price.

Whatever amount is paid or put to the amount it first brings to satisfy the farmer is charged as an expense of the warehouse. That was the work I did for the first nine years; I done the same work while I was at Adel two years, for a warehouse there. I did demonstration work and floor work in satisfying the farmers. Those were the years 1927 and 1928. I was familiar with the warehouses and with the operations of warehouses prior to 1930, and also with the price of tobacco. The profits made by the ware-
[fol. 694] housemen were greater prior to 1930 than they have been since during the depression. Since the depression the warehousemen have not made as much or more money than they did before. The year 1935 was good. It has been a good year. The poorest year that the farmers have had and the warehousemen have had in the tobacco business since I have been familiar with it was 1932. The cause of that being a bad year was a short acreage and disease, blue mold. There was a very small poundage of tobacco raised in Georgia that year and the price was not so good. That was due to the low grade caused by this disease. So far as I now recall, the best tobacco year since I have been familiar with raising tobacco in Georgia in the matter of the poundage raised by the growers and the receipts by the warehousemen was 1920, and also in 1926, 1929 and 1935. They raised the largest amount of tobacco in Georgia in 1930 and 1931. Georgia and North Carolina and part of Florida was one hundred million and some few million pounds. After I left Adel, I came to Nashville and worked in Mr. Brown's warehouse there. I was here in 1929 and have been here ever since; 1929, 1930, 1931, 1932, 1933, 1934 and 1935. For the last three years I have been overseeing for Mr. Gaskins and the estate, and I just looked after the farms and the men. Prior to that I was farming independently, prior to these three years. The Gaskins Estate raises tobacco, a very large amount. We generally divide the marketing of the Gaskins Estate tobacco between the two houses owned by the estate. At present the employment of solicitors by the warehousemen is not of any value to the farmers. No demonstration is done now like it used to be done. I guess the reason it is not done now is that they feel like they can get along without it. The farmers have learned enough about the growth of tobacco. From my knowledge of the methods used by the farmers in this sec-

tion, I would say that the farmers in this section are pretty well informed on how to plant, grow and cure tobacco. [fol. 695] I guess the warehouseman feels like he is gaining something by sending out solicitors. I think the same conditions would obtain, with reference to the amount of tobacco that would come to each warehouse if all of them discontinued soliciting. If there were no soliciting, I think the business of the warehouses would be more equally divided. The distance from warehouses would cut some figure. If a tobacco warehouseman bids on a farmer's tobacco and his bid is the highest and it is knocked down to the warehouseman and it becomes his crop, the same charges are made against that tobacco by the farmer that is made if one of the companies buy it. On all the tobacco that a warehouseman buys in his warehouse, he gets the regular warehouse charges just as he gets them on all other tobacco. I am familiar with the custom in Georgia of the warehousemen getting the sweepings. That's the lost leaves that fall mostly on the floor that the companies' men does not place back on this basket they buy; and after the sale they sweep this up and take it to the leaf room and at the end of the season they sell it as scrap. Some warehousemen grade that tobacco and sort it out and sell the best of it separately from the scrap, and some don't. I cannot give accurately what the sweepings at Mr. Brown's warehouse for 1935 amounted to. It is my opinion that it would be between $350 and $500. That would not be the balance on the purchase price of the sweepings after charging the losses on re-sales; they have a pretty good loss on re-sales. It would be hard to say what the sweepings would be worth in addition to the losses on re-sales. I stated that part of my duties heretofore had been and the custom still obtains of trying to satisfy the farmer if he gets less than the market price either by buying and re-selling the tobacco or by the warehousemen taking it and paying him the market price. If it is sold during the sale, it is called a re-sale. If the ware- [fol. 696] houseman takes it, he re-sells it. Whatever loss or profit he makes goes into his re-sales account. I don't know that I am an expert on growing tobacco, but I grow it alright. I know the different grades. My knowledge enables me to pretty accurately grade the tobacco. In making the adjustment with the farmers which I have referred to as part of my duties heretofore, I re-graded the tobacco myself. In making these adjustments, we give the farmer

all it will bring. If a man was around the sale and turned his sale down, we would regrade the tobacco and give him all it was bringing. When the warehouseman takes it, we allow the farmer the market price on that particular grade, and I grade it myself and allow the farmer then the market price at that time on that particular grade of tobacco. The warehouseman takes it, and then it becomes his tobacco. For the last three years, since I have been operating the Gaskins' farms and also my own farm and raising tobacco, the warehouse for which I worked paid me an additional salary besides what I got as over-seer. They paid me to help sell tobacco, help them with the sale and look after their interest wherever I deemed it necessary. The warehousemen paid me an additional salary from what I got in overseeing the farms. I was manager of the farms and if any dispute got up between the warehouses and the buyers, I would settle it. I did not do much in the way of influencing tobacco to the warehouse, because I had all I could do to look after ours. I sold all my own tobacco and the Gaskins' estate tobacco through both warehouses. I know what it has cost heretofore to operate the Planters Warehouse in Nashville. In 1935 the rent paid was $3500; that was for the period of the market. In 1935 it lasted about three weeks. They paid their auctioneer $900. As compared with what other people of this community get for their services requiring similar intelligence and preparation, that does seem rather high. I don't know of any other occupation requiring no greater amount of intelligence [fol. 697] and preparation that commands as large a salary as that for three weeks work. The next employee in the warehouse that is called an expert is the bookkeeper. He got $300 this year for three weeks work.

I don't know of any other bookkeeper in this community or in this part of the state who gets as much as $300 for three weeks work. In my opinion that is an extravagant expenditure. The next highest paid employee is the man who carries the book on the sales, he is called the book man. It is my recollection that he got about $250 this year. His work in carrying the book requires great skill. He has to figure up a lot of tobacco and do it fast and it takes an experienced man to do it. He takes a certain amount of tobacco and has the number of pounds and he figures the amount it brings and charges it to who bought it, to one of

the buyers, say the Imperial or one of the other buyers. That takes some knowledge of mathematics, and they have to be plenty good. The next man is the clip man. He carries the bill that the farmer receives with items showing his sale. He figures right along with the book man. He goes down the line with the book man, right beside him, and checks with the book man about the number of pounds and the amount the farmers' tobacco bring. The book man and also the clip man figure it out; they figure it together and check each lot against each other. The clip man gets about $200 or $250. His work is on the sale and after the sales are over he balances up and gets the bill all right. That's true of the book man too. On days that they had crowded markets here in Nashville, they would sell in the Planters warehouse one day and they did not sell at that warehouse again for two or three days. While they were not selling at the warehouse, the clip men and the book men did have something to do after they figured up the sales. They would help weigh the tobacco as it came in. They did anything that was to be done and that was required of them. The next most expensive men was the [fol. 698] ticket marker. He puts the price on the ticket and charges it to whoever bought it. The ticket was made out in the farmer's name and the pounds that was on that lot, that was on the ticket, and he would hold the ticket, pick it up and hold it and put on it whoever bought it and what price, and he charged it to them at whatever price it sold for. He wrote that on the ticket and put it on the tobacco. He got $125 for that work. That required accurate writing and knowing who to charge it to; he did not figure. He wasn't told who bought it; he had to catch the bid, the buyer to whom it was charged. The name of the farmer was on the ticket. He had to catch the bid and the amount bid and he put that on the ticket, and that required attention. It is true that a clerk in a store or a bookkeeper in a store is required to have similar attention. The next man is the floor manager. He looks after the floor, unloading the farmers' tobacco, placing it on the floor for sale and helps keep the different lots of tobacco of a farmer straight, and helps the companies find lots of tobacco and the farmer and things like that. The warehouseman himself is not usually — floor man. The floor men generally get about $200. In addition to those I have named, you have to have

an extra man in the office to figure the bills and charges, the clerical help in the office. I don't know how much any of the solicitors used by any of the warehouses this year, in 1935, received for their services for soliciting. If some of them received $200 to $500 for their work, I call that extravagant salaries. I had a scale or schedule in my possession that I made out, showing what it has been customary for these various employees to charge in Nashville. I gave it to Dr. Turner as I came up here this morning. He has left. There is a considerable amount of tobacco lost on the floors of the warehouses. It is not lost in the bookkeeping; it is lost through the company. The tobacco is sold and the books come along and charge it out [fol. 699] to whoever buys it. The company men inspect the tobacco and take it to the loading place and there they load it either on trucks or in cars; and on this ticket—there is two duplicate tickets, the company man keeps one and the warehouseman one. Coupons, we call them. If you should fail for the house to get any of those coupons and they come up and tell you on their bill that you have charged them with tobacco they have not gotten, then you go to your coupon box and hunt it. And if you have not a coupon, you have to credit this bill. It gets lost when they don't tear it off. I mean by that that they hand both coupons to the buyer. In that way the warehouseman loses his record. If the buyer comes and says "I did not get such and such a pile of tobacco" and the warehouseman hasn't any evidence at all—I mean he has not if that occurs. In that particular instance the companies, the buyers, get the tobacco. In 1935 the Independent Warehouse lost a little over $1,200 with one company in one week. That was the Imperial Tobacco Company. That was $1,200 of lost tobacco for which the warehouseman had to pay and had to lose it. In paying the warehouseman for tobacco, the buyer did not pay for that particular tobacco represented by a $1,200 charge on the bill against him. That was caused because they did not take the coupon and keep it. It was charged to the warehouseman because he was responsible anyway. The particular expert employee that was responsible was the man that took up the coupons and the common labor in the warehouse. I don't mean the man for the buyer, I mean the warehouseman's man. The one who takes up the coupons is first one, one year, and

another the next, and maybe two or three in one year. We usually call the particular employee of the warehouse charged with the duty of taking up those coupons and seeing that they are put in the right place for the warehouse and giving the other to the buyer, the assistant floor man-[fol. 700] ager. That is the warehouseman's man, and the company's man who generally gets his is called a clerk. The warehousemen should not permit the buyer's clerk to do that without anybody being present to represent him, but they do. That is rather negligent on the part of the warehousemen, but it is a matter of courtesy. From my opinion and knowledge that could be prevented. I should think that particular element of loss constitutes a part of the expense that the warehouse charges against the business.

Cross-examination:

I have not figured up the exact number of years I have been familiar with tobacco and the raising and marketing of it, but it has been ever since this market was here. I have worked for Mr. Brown most of the time. He paid me $300 in 1935 for manager of his force. Of course I spoke a good word for him whenever I could do it during the year, outside of the three weeks marketing season. I would do that at every opportunity I had. I spoke for his warehouse only. In other words, I drummed tobacco in one sense of the word. I expect the service I rendered was worth more that what I received. The work he hired me to do is a customary employment by warehousemen. During the marketing season I actually worked in the warehouse. I have never operated a warehouse for myself, and I don't own any warehouse property. Demonstrations have about stopped. In soliciting tobacco for Mr. Brown's warehouse, if a farmer asked me my opinion about his crop, I told him; I would do it for anybody. I gave him the benefit of my experience. That's what I was paid for by the farmers heretofore, to give them the benefit of my opinion and knowledge; that's what a demonstrator is paid for. The farmers have quit paying me, but if a farmer asked my opinion about a particular problem that comes up in the curing of his tobacco, I still will tell him. It is a fact that the farmer is paid for every pound of tobacco [fol. 701] brought into the warehouse, regardless of

whether it is lost, dropped off or swept up, or anything. If it is on the book, he gets his money.

Redirect examination:

The tobacco is weighed in and the farmer's name is placed on a ticket and the book, and he gets his pay. The farmer gets his pay according to the ticket and the book, and they both correspond. In a way the warehouseman does not pay for the lost tobacco. He pays the grower for it. You can take a pile of tobacco out of here and work it into a pile of 200 pounds and place it on the floor and let the sale pass over it, and then take it in and re-work the same tobacco and grade it and pack it properly with about the same amount of better tobacco, or even with the same tobacco put on the floor right, and nine times out of ten you will get more for it. The tobacco buyer pays for that tobacco according to the weight before the sweepings fall off. He gets that much less tobacco. Nearly every company re-weighs it, and they allow about two pounds per one hundred pounds for variation, and all over that, the warehouseman has to repay, credit the buyers bill with it. The sweepings compensates the warehouseman for that loss, so far as it goes. I would not think that in the buying of tobacco by the companies, all of that is taken into consideration in connection with what the buyer will pay for the tobacco, because all he is short the warehouseman has to pay for. He does not lose. They re-weigh every bit of it. The two pounds I referred to takes care of any normal loss. The tobacco buyer buys his tobacco and fixes his price considering the customs and things of that kind. If a farmer went around and asked my opinion, I would advise him whether I was a solicitor or not.

[fol. 702] E. L Giddens, sworn in behalf of the Defendants, testified as follows:

Direct-examination:

I live four miles east of Ray City in Lanier County. That county is the county immediately south of Berrien, and was part of Berrien County. It used to be a part of Berrien, but it is not altogether south; east and south

of Berrien County. My occupation is farmer. I farm on a small scale, I guess. I grow anywhere from 15 to 35 acres of tobacco each year. That is a small acreage according to the number of plows I run. I have been familiar with the planting, growing and curing of tobacco, and the marketing of tobacco ever since it was first started in this county. If I remember right that was about 1919. I have been growing tobacco myself since that time. I haven't been engaged in the warehouse business in any capacity during that period, except in soliciting. I am still soliciting; have been soliciting all of those years except the first two. That would bring me up to about 1921, and from that time on up to the present. I solicited this year for W. L. Leath, Adel, Georgia, but I did not get any extra pay this year. I did not get any pay at all this year; they hauled my tobacco for me free. That was to a warehouse in Adel. I had all of my tobacco handled and hauled to the Adel warehouse. I had a pretty good crop this year. That was done by the warehouseman at his expense and not at my expense this year. Last year, 1934, I did soliciting for W. L. Leath, Adel, Georgia. They hauled my tobacco and gave me $50 for soliciting that year. I had the same acreage last year that I did this. I didn't solicit for the same warehouse in 1933; I think in 1933 I solicited for the Cook County Warehouse. That is also in Adel. Knott and Dunn operated it in 1933. They paid me $50 for my services in 1933. They furnished the conveyance to haul my tobacco. Hauling my tobacco didn't cost me anything in 1933. I [fol. 703] don't remember whether 1932 was the year in which there was such a small crop and they had some kind of blight on the tobacco called blue mold, or not, but I think I worked for Mr. J. N. Warren that year. His warehouse was at Adel. I don't recall what compensation I got that year. Some years they would give me $100 and some years $50, so I cannot keep up with it. That has been going on since 1921. Every one of the years since 1921 up to the present I have solicited for some warehouse, and have received some years $100 and some $50. All of those years I have also had my tobacco carried to the warehouse free. Trucks charge anywhere from 15 cents to 25 cents a hundred for hauling tobacco. I haven't figured out how much in 1935 it would have cost me if I had had to pay to have my tobacco hauled to Adel. I don't know how many

pounds I had hauled for me in Adel in 1935; it was about 1500 pounds. At 25¢ a hundred that would be $2.50 a thousand, and 15 times that would be the amount I had to pay.

Cross-examination:

I guess I am pretty well known over around Ray City. I solicited tobacco for Mr. Leath in 1935. I don't think what I did for Mr. Leath was worth $30 or $40 this year; I did not get any pay for it and I did not do much. Mr. Leath did not pay me anything. He hauled my tobacco. I can't say whether the years he paid me $50, I did $50 worth of work for him or not; I possibly might have. I got tobacco into his warehouse from among my friends and neighbors. I guess I gave him service for the money he paid me. All of the tobacco warehouses have solicitors. I cannot say that if they don't have them, some other warehouse is going to get the business. I think, in my opinion, that if they would leave off all the solicitors and let each farmer carry his tobacco where he wants to, it would be equally divided and cut the expenses of operating the houses. If he wanted to haul my tobacco, and I wanted to [fol. 704] sell it there, that was all right, but if I didn't want to sell it there, then I would not have let him haul it.

Redirect examination:

It is true that a large majority of tobacco farmers or growers patronize several warehouses in attempting to get the highest price. This soliciting might induce them to carry their first load to a warehouse, but if they heard another warehouse was paying a higher price, the majority of them would go to the other warehouse. The real inducement that prevails upon a farmer to carry his tobacco to a particular warehouse is largely what price he thinks he can get. One warehouse furnished me a truck to haul tobacco to that particular warehouse. I don't remember the year. It was the year that Mr. W. L. Leath ran the Union Warehouse in Nashville, Georgia. He furnished me the truck and gave me 20¢ per hundred pounds for all I brought in, for all of the tobacco that I would bring to his warehouse. Claude Strickland, another warehouseman, paid me $5 a day to post signs for him.

A. B. Baskin, sworn for the Defendants, testified as follows:

Direct examination:

I live at Ray City, Georgia, in Berrien County. I live out two miles in the country, in Lanier County, right on the line of Lanier and Berrien. I have been familiar with planting, growing and curing tobacco 14 or 15 years, ever since it has been grown here. I have dropped out about three years during that time, but I have been growing most of the time. I dropped out along in 1922 or 1923, somewhere along there. Up to 1930 we had a few years that were not so profitable and some mighty good ones. On a whole it has been worse since 1930 that it was before. That has been true of every kind of occupation, practically. During [fol. 705] the years I have been growing tobacco, I have acted as solicitor for warehouses. I haven't but twice; I don't recall the first, 1933, I reckon, and this year; in 1933 and 1935. I solicited for W. L. Leath's warehouse at Adel in 1935. I got $75.00 for my services this year. Before, I just got truck hire—something like that. They didn't pay me for the hauling of my tobacco to the warehouse; I had to haul my tobacco. They paid me once, three years ago for hauling the tobacco, but I don't remember whether it was them or Cook. They paid me 20¢ for hauling tobacco. I haven't been engaged in running a truck hauling tobacco; I hauled my own tobacco and that of my tenants. Nashville is the nearest market for me, mighty little difference between Hahira and Nashville, only a little difference. I carried my tobacco to Adel. I went there because I wanted to, for one reason. I don't know any other inducement. I was marketing in tobacco in Valdosta until I went to Adel. The things that made me leave Valdosta was the price. The Florida tobacco came in on the price, and our grade was not up, and I took the second price for my tobacco and I decided to go where grades were not so good. I was not soliciting in Adel at that time. I didn't get my tobacco hauled to Adel for nothing.

Cross-examination:

There were some good years and some bad years from 1920 to 1930, and some good years and some bad ones from 1930 to 1935. The year 1935 was an exception for the last

five years; there's no question about that. I had a heavy yield per acre this year, and got a good price. I did not have as many pounds as the market had previously sold; I had less acreage, but I got an exceptionally heavy yield per acre this year. I did not solicit but one year, in a way, two years. I just got pay for carrying tobacco the other year. I got paid for my services, and I rendered services. I am pretty well known in my community. I spoke for the Leath [fol. 706] Warehouse. I did not run down the place as a good market at all.

Redirect examination:

I didn't run down any other places. I left my business and went out actively soliciting this past season. I done some canvassing for him this past season, in 1935. That was the year he paid me $75. I was out soliciting about three or four weeks, but not in active soliciting. I was in that about a week before the market; about a week before the market I went out and actively solicited.

L. K. Knox, sworn in behalf of the Defendants, testified as follows:

Direct examination:

I live in Lanier County. My business or occupation is farming. I have been growing tobacco ever since it has been planted, was one of the first growers. That was in 1919. I have been growing it every year since but one, that was when the blue mold killed my plants. During that time I have solicited for all the warehouses. Have worked for them about 10 years. I worked for W. L. Leath, the Talley boys, J. N. Warren and Nat Smith at Valdosta. I was paid from $100 to $50 a season for the soliciting I did for those warehouses; from $50 to $100. My tobacco was not hauled free of charge, hauled my own tobacco. I didn't do any hauling myself for any of these warehousemen. The only work I did for the warehouses was just drumming for them to get tobacco in the house. I did that for four different warehouses. I devoted time to that from the time it was started up until the season ended. I spent practically day and night for about five weeks at it. I don't know what year

I did that,—every year. Some seasons they paid me $100 and some seasons $50. I was not a solicitor in 1935. It seems to be a pretty general custom among warehouses to [fol. 707] employ solicitors. I knew of others all over the county who were employed at the same time I was. I mean all over Berrien County and a good many others.

Cross-examination:

I returned value received for the money I got, and I done the work, too.

Redirect examination:

That didn't benefit the farmers much. I just pulled tobacco for the different warehouses is all.

Recross-examination:

I reckon the warehousemen paid me for the services I rendered to the warehousemen.

Redirect examination:

If my salary and the salaries of the other solicitors were charged up as a part of the expense of operating the warehouses, and in fixing the warehouses charges, the farmers pay it.

W. F. Patten, sworn in behalf of the Defendants, testified as follows:

Direct examination:

I live about 5 miles east of Adel, Georgia, in Cook County; between Adel and Nashville. My business or occupation is farming. I have farmed practically all of my life. I have grown tobacco a number of years. As well as I remember I started growing tobacco about 12 years ago. During that time I have been approached by some of the warehousemen or their employees with reference to hauling my tobacco for me. The proposition made to me was just soliciting the carrying of my tobacco to a particular warehouse. The inducement was usually to haul my tobacco free provided I would carry it to that particular warehouse, haul it free of cost. None of them ever hauled it for me free and carried it

to some other warehouse; they hauled it free but not to another warehouse.

[fol. 708] Cross-examination:

I never did solicit for any tobacco warehouse. I don't recall the last year they hauled tobacco free for me. They hauled none this last year, 1935, and I think not in 1934.

R. E. CURRIN, sworn in behalf of the Defendants, testified as follows:

Direct examination:

I was born at Oxford, N. C. I am 54 years old, last birthday, and I lived outside of that I have lived here about 12 years in this State, and 15 in South Carolina, and the balance of the time in North Carolina. I have been living in Georgia 12 years. I plant and raise about 30 acres of tobacco. I started in the tobacco business when I was about 15 years old at Wilson. I have been in it speculating, warehousing and farming. I am not at the present time employed by any warehouseman. During the past season I was employed by A. King, Barker & Oettinger, the O. K. Warehouse in Douglas, Ga. I worked as an employee for them in their warehouse the past season. With the exception of the year I worked for the mortgage company, I have been working for warehousemen practically every year I have been in Georgia, in some capacity. I started using my influence and helping them out in 1926 and quit them in 1933 and went with the Soaper House and ran the sale there. Last year the crops were so short they could not afford to pay me and the Board of Trade hired me as supervisor of the sales. And I ran a house in Nashville in 1925. At the time I operated the house at Nashville in 1925, the charges that the warehousemen then generally charged over the belt was not the same that they charged in 1927 and 1928; they changed it in 1927, and went up to a new rate in 1927. In 1925 I was operating on a rate different to the rate that all of the warehousemen adopted in 1927. The warehousemen generally in Georgia were operating on the same rate in 1925, all of them the same thing. In 1927 they adopted [fol. 709] voluntarily a new rate among the warehousemen,

from what I can understand. I was not at any meeting or anything like that, but that is what the files on my tobacco show. The new rate adopted in 1927 was some higher than the old rate under which I operated in 1925. The reason the warehousemen raised their rates in 1927 over what they had been prior to that time was because—now, I have just got to go by what they told me, that it was on account of the short crop. In 1925 the charges that the warehousemen were operating under was the same rate that the Georgia Legislature fixed. The rate fixed by the Legislature is the same rate that the warehousemen were operating under in Georgia up to 1927; I don't think there was any difference. The rates they were operating under up to 1927 were the same as the North Carolina rates. They based their scale of charges in Georgia until 1927 on the same basis of charges that they had in North Carolina. I know what the scale was in North Carolina. It was 2½% commission, 25¢ for weighing—no 10¢ for weighing and 25¢ for auction fees. I am familiar with what the warehouses actually charged in North Carolina, regardless of whatever was fixed by statute or by agreement. They were what I have stated: 25¢ auction fees, 2½% commission and 10¢ weighing. Up to 1927 the charges in Georgia up to a certain amount of pounds I think up to 200 pounds, was 50 cents when it ran over two hundred pounds for auction fees, and twenty-five cents for weighing, no, fifteen cents for weighing. Anyway, it figured out 20% more than the last charges the Legislature put on it, figured 20% more on the charges as a whole. It has been so long since 1927, and I never looked over the books. The books show and my bills show, I think we paid them during 1925 2½% commission, 10 cents weighing and 25 cents auctioneer's fees. That's the best of my recollection. [fol. 710] The Georgia tobacco market was established in 1918. I attended the first sale here. I think probably the farmers in Georgia are more efficient from 1927 up to 1935 than they were in growing, curing and marketing tobacco from 1918 to 1927. I think they know how to raise it better; of course they do. I have never been a tobacco demonstrator. We used to call it "instruct" in North Carolina. I never followed the demonstrating business. I am familiar with the growing of the tobacco and the efficiency of farmers in growing it in the Georgia belt; I am pretty well acquainted with that. From my experience as a grower and handler of

tobacco, I base my answers that I made on that experience that I had as a tobacco grower. I am a tobacco grower and know the business as good as any of them do, I reckon. Prior to 1927, the growers in a good many sections in Georgia had what we call demonstrators. That practice of employing demonstrators has practically been discontinued. I suppose it was because the people have learned it. They don't have as many as they used to, only have a few. From my experience, I don't think it is worth while to the tobacco industry in Georgia to employ generally demonstrators for the farmers or growers; only with people just beginning it would be a big help to them in curing, with the new beginner. I don't think the experienced farmers need any help in curing. I am not familiar with who pays the demonstrators where they have them employed. I know they used to get demonstrators, but guess the warehousemen did not pay them. I know Mr. Brown used to have one and I think he paid him, but I think the farmers paid them mostly. I don't know it. I just know what the people tell me. Of course, I am not in position to know what they did, and what the trades were. I am familiar with the tonnage of tobacco grown and marketed, bright leaf tobacco in the old tobacco belts. I am familiar with the tonnage grown in Georgia. In proportion to the tonnage grown and marketed, I guess Georgia has a few more warehouses than the old tobacco belt, [fol. 711] considering the tonnage, and only a few more. This State doesn't raise very much tobacco, and taking a market like Wilson, selling 65,000,000, 70,000,000, 80,000,000 or 90,000,000 probably—they have more warehouses according to tonnage. In the Wilson market there are about ten warehouses, and four sets of buyers. Four sets of buyers and ten warehouses orderly market around 85,000,000 to *90,000,000 pounds of bright leaf tobacco in Wilson*; Greenville does the same thing. That is more than all the tobacco markets in Georgia sells. I consider the forty-four warehouses operating in Georgia necessary to orderly market the Georgia crop. I will state why. Under this new ruling of the Legislature, the only way in the world the warehouses can come out and make any money is to eliminate certain markets and some of the houses. I will agree to that. Many of these warehouses can be eliminated without effecting the orderly marketing of the crop. If the people will just cut down the number of houses, they can go then. The ware-

housemen can make some money then, if you eliminate some of the markets and some of the houses. Like there are five houses here, and cut them down to three and they can go and make some money. My experience as a grower of tobacco and in marketing it makes me think we can go with three houses in Douglas, and that when we put up five houses it ruins the market because they do not get enough tobacco to make money. From my experience as a tobacco grower and tobacco warehouseman, the market in Georgia is nothing like as long a season for marketing as is necessary to orderly market the crop. It ought to run anyhow six to eight weeks even under this present law. That ought to be to give us growers time to get our crops marketed properly. I have lost $20,000 carrying tobacco to North Carolina. That would be a whole lot more benefit to the farmer than the shorter season. The green would come out of the tobacco and come out of the leaves and you could market it like it should be marketed. The tobacco farmer doesn't have [fol. 712] any more part in deciding the length of the season than a bird flying. I am familiar with the marketing season in the old belt, just came from there, sold mine there. The Georgia season is so fixed as to fit into the season of the old belt. It is kind of betwixt and between. I sold mine in the old belt market because I could not get it here to save my life, because I could not possibly take it off the sticks, much less get it ready. They closed the market a day or so early and I could not get mine to market and had to follow them into the Carolina markets, and took a loss for it on what I would have got here. I cannot say for sure whether the skilled men that come down to Georgia and operate in this market would have employment except for the Georgia market or not, but from observation or what I have seen and what I have heard and what was told me, there is just some of them that come to fill in. I know they would not come if they had a job up there, of course. I don't think all of them do, but some do. I don't know exactly; can't say for certain. The same people who operate here as skilled workmen, at the close of this market go on into the old belt markets. I know that to be a fact. I know they do because I go up there and work in tobacco in some capacity, speculate or something. Most of the years they close the markets in Georgia in time for all the skilled labor to go into the old belts in eastern North Carolina. A good many

buyers from here engaged by the companies in this market go into the Carolina markets and buy there. The Georgia marketing season has interfered with the eastern North Carolina markets, it has interfered in a good many ways. I hired Mr. ——, the best auctioneer, Herbert Baker, and had to give him $1500 for the season and the season opened too quick and I got three weeks' work from him; so it conflicted and he had to leave me. I hired him for the season, knowing that he had to leave me when that other market opened. They did not mean for it to conflict, but it does. I [fol. 713] know that when the market opened in North Carolina it interfered with me. It took my good man and he had to go to that market. They have to go there because it is a big thing for them, bigger than it is here. In the normal average year, the Georgia market dove-tails into the North Carolina market without conflict, it does most of the time. When we have abnormal years there is a conflict and the tail end of the Georgia market conflicts with the beginning of the North Carolina market, and the effect of the conflict is to take the good men from the Georgia markets. When there is this conflict between the tail end of the Georgia season with the beginning of the eastern North Carolina season, it has the effect of taking the good buyers off the Georgia market and sending them to the eastern North Carolina market, and lowers the price. The farmers suffer. The farmers in Georgia suffer from the conflict, in fact everybody knows that because that is a hardship on the growers. In every instance where there is a conflict, the Georgia farmer suffers by the conflict. If you were on the sale, you would see what it would mean. From my familiarity with the tobacco belt in Georgia in area and tonnage, I will say that everybody knows that if they had smaller, fewer markets here they could operate the tobacco warehouses and make more money, the warehousemen could make more money. It ought to be different, and they ought not to have as many as there are. I quit it because there were four in Nashville and I could not make money out of it. Twenty-seven to twenty-eight warehouses could orderly market the crop in Georgia and would be all right in this State. With the operation of twenty-seven to twenty-eight houses in Georgia instead of forty-four, it would be to the better interest of the farmer. If they took time to handle those markets and had a longer market it would be to his

interest. Of course, the charges should be cut some by that, and he would have a longer market. It would cost him a [fol. 714] little more on the trucking to those markets but if they give him a long enough market, it would be to his advantage.

The markets could be so located with that number of warehouses as to cause the farmer no unreasonable haul for his tobacco. With around 28 to 30 warehouses, something like that, that would be about three in Douglas. And if we had until the 1st of September or the 15th to sell tobacco the warehouses in Douglas could easily sell about three million pounds each and make some profit, make some money and support his sales. In other words, it has got so this day and time that if a worehouseman don't push their tobacco and the buyer hasn't got respect for his judgment, it will go about $3.00 or $4.00 too cheap on the hundred pounds. And if a man hasn't enough business to run that business, he then cannot push it like he should. The way I would fix it the country over, and I don't think it would cause anybody to spend a lot of money, my opinion is it would not, I would have one market at Vidalia for them to serve that section and take care of that part of the country, one at Blackshear for that part of the country, have a market here, one at Nashville, one at Valdosta, one at Camilla or Pelham, Camilla I reckon is the best location, and one at Moultrie. A lot of folks have been talking for just what I think here, centralizing the markets. They think it would be a good thing for them. I understand some of the companies have been talking that too. Anyway, with the charges like they are and the number of warehouses and the tonnage, a person cannot operate a warehouse unless he sells two million or two million and a half pounds of tobacco and at the same time gives a man service; I mean profitably. The tendency has been towards centralization in Georgia regardless of the fact of what might be thought the best thing. There have been some small markets in Georgia already abandoned, even under the old scale of fees. Fitzgerald and Bainbridge have been abandoned, and this little market up here at Abbe- [fol. 715] ville, up above Fitzgerald has been abandoned; also one at Cairo, Alma, Thomasville, and I think Quitman too. It is my opinion that the scale of charges fixed and the tonnage will automatically in the end adjust themselves with reference to the number of markets and warehouses. I

believe that if they had those warehouses located and centralized like that, the warehousemen can go under the present rate and of course help the farmer some with the charges, but it would certainly be hard on the warehousemen. It would be hard on the warehousemen to give up their houses. If you eliminate some houses, it would be hard on them. Most of the warehousemen rent the warehouses, I think. Some of them owns their warehouses and would lose by reason of their investments in giving up those warehouses. There is about one-half rents and I guess about one-half own. There are three owned here by the operators and two operated at Hazlehurst are owned by the partners. A good many of them rents. Moultrie is owned by the capitalist there in town. They are rented. The warehouses at Nashville are rented, and there are rented houses in a good many others. I have a cousin, Don Currin, who owns a house at Blackshear. Most all of them there except the Brantley House is that way. It is one half and one half, I reckon, something like that. Where they discontinue a warehouse, there isn't much market for the sale of baskets trucks and scale and equipment by the warehousemen or whoever owns them. Couldn't get anything much for them. All of them own the baskets and trucks you know and there is not much market for them. They are constantly replacing them and renewing equipment, but it is just like a second hand car. They don't get very much for it. They used to have a market in Nichols, N. C., and that market was abandoned and they had a lot of stuff there they had to take about 15¢ apiece for the baskets and very little for the trucks, and it was a loss that way. I didn't pro-
[fol. 716] test the extent to which the warehousemen raised the rates in 1927. I thought it was justifiable because they were not making any money. I operated in 1925; I was not operating in 1927 along when they raised it. I heard a little comment that they raised it too high in 1927. I heard a little comment that the charges were stiff, but I explained to the farmers they were not making any money, so nobody said very much about it until the depression came and the law was being talked about, until the low prices for tobacco came and the warehouse bills looked big against what the tobacco brought. But at the same time the warehousemen have not made much money. I cannot say I am really familiar with the books and records of the warehousemen, but I will say

this: you can generally tell what they are making. I have never looked in the books or anything like that, but know they haven't made much money out of it. There is no big money in it. There were lots of warehouses operating in 1925. I don't reckon there were more than there are now. They have discontinued those markets, maybe a little more, but they have put up others. Back in 1925 there wasn't but three running here. Not much difference in the number of warehouses because some of the markets has put up some more houses and they have discontinued some markets. With the raise in rates they put in first in 1927, there have been new warehouses built, a good many. A good many new ones have been built. The building of those new warehouses following the raise in the charges caused the tobacco markets to be over-built; I expect that had something to do with it. From the grower's standpoint there is no reason for the existence of a warehouse that sells less than two and one-half million to three million pounds of tobacco. You might have a small warehouse and still give a farmer a good sale for it. I would not say that absolutely, because a small warehouseman sometimes puts on good sales. It is unfortunate fellows who are not popular and who can't do [fol. 717] the trading. The smaller warehouseman could render the grower the service that larger one can, if he knows his business. I have seen some small warehouses get a good price out of it but ordinarily a man that sells three million pounds can do it easier. A man that don't sell as much as two and one-half million pounds won't stay in business long at the present rate. The warehouse that sells less than two and one-half million pounds would automatically be dropped; he cannot go, and then the man who sells as much as two and one-half million pounds will make that much more at the present rates, but if he sells less than two and one-half million he won't be making anything, less than two and one-half million or two million. Because we sold two million pounds down there and did not do anything, the house I was with. All I can learn is that those markets were discontinued on account of the fact that they did not have the tobacco, and they would not send buyers unless they sold two million pounds. All I can say is what I heard. This Abbeville, they tried to keep that market there but that was closed on account of lack of tobacco. Fitzgerald would have stayed a market as long as they wanted it to if

they raised the tobacco there. They would have kept the houses there open if they had raised as much as two thousand acres, I believe. A man who sells around two and one-half million pounds and was a good judge of tobacco and knew how to operate and was popular, he could make some money if he knew how to cut his expenses. That isn't an unusually large tonnage for a warehouse to sell. If a man makes big money he ought to sell three and one-half million or four million pounds. There are warehouses in North Carolina that sell thirteen and fourteen million pounds. The figure I present as being a figure at which warehousemen can make money on the present scale of rates is a low figure for warehousemen generally in all the tobacco markets, old and new. I know there is a man in North Carolina that is not going to make money in North [fol. 718] Carolina because the tobacco is sorry but he is a man that can make money in tobacco. He has a good market there and longer to do busines, and he has a better chance to make money there than in Georgia because of the short season and because of the rents and things like that. Some warehouses sold as low as two and one-half million pounds and made money, but they ought to sell two and one-half million pounds anyhow in the market the size of Douglas. Warehousemen can sell considerably less than that in Georgia and make a little, but not much. It just depends on the rents. That is a big item. From my experience on the Georgia market and my experience in growing and marketing tobacco, I say the rent is too high. It is too high for the shorter season; that is my opinion. I don't know what causes it, but the rent is high in Georgia for one month or three weeks. I don't know what causes it. I guess a man charges interest on the investment; it costs a good deal to put up a house. It is my idea that the rent is higher on warehouses than on any other property I know of in the community.

Cross examination:

From my observation the forty-four warehouses in Georgia, operated for the last year or two, have not made any money under the present charges. They could not make money under the scale passed by the Legislature. I would not have a house here. The head man of each company determines the number of markets in the state. Mr. E. G.

Kern was the man that got markets in Georgia for the Export before he resigned. That is the tobacco manufacturers; you cannot get the companies unless the head man will give you a market, no matter what you may have done about it even if you have built a warehouse. Some of them have been built in Georgia, I think, and then have not got a market because you can't get it unless the companies say so. The buyers don't control that; it is the heads of the com- [fol. 719] panies that determine that. I do not know of any law that would keep anyone from opening his warehouse or from building a new one, unless the companies would not send buyers, and they have got to go in there if it is already an established market. If there isn't but one pile, they have got to go in that house and buy tobacco if the market has already opened. There is no way to stop a man from having a house. There is no way to stop a man from building a house or opening a new house in Douglas, not any in the world. That is just the way the country and that business is organized; they did not want me to build or open in Nashville and I went on and did it anyway. I operated in 1925, only one year. In 1924 I bought on the first tobacco sold in Douglas. The rates then were 2½% commission—I won't say for certain, I think it was ten cents weighing fees and 25¢ auctioneer's fees. That's what I think it was, the same thing it is now. The same thing charged this last year on the new law; the new rates that came up last season. In 1918 they were using the charges in the new law. The charges were not the same as was charged last year; that was before they raised it. They raised it in 1927. They did not raise it until the ninth day of June, 1927, is my recollection; and it was a short crop and yet a good crop and commissions paid were pretty good, but it looked like in the tobacco business at that time they had to raise it, and it was all right to raise it because there was no warehouseman making money on tobacco. The 2½% commission is generally charged throughout the tobacco belt. In other words that made it twenty per cent higher than it was in 1925, and this new law the Legislature passed is twenty per cent on the tobacco more than the charges were in 1925 when I ran a house. Prior to 1925 it was always the same thing. It started off the same thing as in North Carolina. When I say the charges in North Carolina were the same charges they started with in Geor-

[fol. 720] gia, I can't say whether I refer to the same charges they had before the tying and grading laws were passed in North Carolina or not. I can tell about South Carolina. There has never been an argument about that. I am 54 years old and it has always been the same there when it was not graded and tied. In South Carolina now they grade and tie it. They do not tie and grade it in Georgia. Tying and grading effect the receipt of auction fees and weighing fees. If it is tied and weighed, you can handle it cheaper. In other words, I don't know that you can handle it any cheaper, but it will give you more piles, and the warehouseman will get more out of it in that way. In South Carolina when the Legislature passed that law, it was felt that it was best for the farmer and the warehouseman to have it graded in South Carolina because it helped the warehouseman in his auction fees and weighing and it was alright for the farmer because it got him better prices. So when the law came up there, they still went on and passed it. When they are made to tie it and grade it, it makes a longer market. And they feel like the people in North Carolina about it now, that that's the only way to handle it. The courts or Legislature have control over the handling of tobacco in that way, because they passed a law that any warehouseman would have to pay $10,000 where they auctioned any pile of tobacco in the leaf. So you cannot buy it down there any other way. I have speculated in South Carolina. You can buy it here in the leaf, of course, because that's the way it is sold. You can buy it privately in South Carolina in the leaf, but you cannot auction it. If the companies would not agree to that in Georgia and would not furnish buyers, we could not operate a market, but I think they would agree to it. There is a way for the Legislature to force them to do it when they didn't want to; the Legislature did do it in South Carolina. They did pass that law up there. I don't know whether the courts have done anything about it or not. Now the companies have not got to [fol. 721] do it. They could boycott it if they wanted to, but they were willing to it and they agreed to it in South Carolina. A warehouse has got to sell two and one-half million pounds, in my opinion, even under the old charges to make money. I sold two million and did not. There were not many who sold two and one-half million this year, 1935. They did not make any money either. In my experi-

ence as a warehouseman and from my knowledge of the tobacco industry, the pushing of the sale is the only thing that brings the biggest volume of business to a warehouse. That's the tap root. Every warehouseman that has a sale on, if he pushes his sale and gets the farmer a good price, he comes through. Besides that he must be well known and popular, just like folks running for office sometimes. I will tell what it done for me when I went to Nashville. Of course there was a big crowd of warehousemen there when I went in there. They were hiring drummers and I'm not going to do those things. So I went ahead and I got twenty-five cents on the floor the first week. When the sale started, after a while I commenced bidding on it and I sold as much as any of them that went ahead and did those things and paid the price for them. The farmers were influenced by the drummers and those things and of course that helped the other warehousemen earlier in the season, but the farmers learned better and have learned better and that don't work like it used to. I lost a right smart of money in my leaf account and lost some money altogether as a result of pushing the price to twenty-five cents. I lost money trying to make a market, trying to build a market. My leaf account loss was caused by pushing the grower's tobacco on the sale. They were getting eleven and twelve cents and as low as ten cents for it, and I pushed it up to twenty cents and lost considerable money. The practice of employing instructors has been about discontinued in most sections. The growers grow their own tobacco, but there are some beginners that grow tobacco. There are some beginners if they can get any acreage. The people in Geor-
[fol. 722] gia have learned to grow tobacco, but not as fast as they should. There is something that you can learn every day about tobacco, no man never knows it all. One year blue mold killed more plants in Georgia than ever before. Curing it is where the Georgia man gets stuck, because it is hard to cure tobacco properly down here or any place for that matter. They hired men for ten years from North Carolina to help them with that and some of them came down from Oxford. They came down and succeeded in teaching the growers of Georgia some of the points. The warehousemen and demonstrators who came down from North Carolina knew how to cure and grade tobacco. If the warehouseman doesn't know that pretty well, he will

be out of business before long and lose all the money he can get out of the bank. The warehouseman has to know the grades of tobacco as an expert. It is to the warehouseman's interest to know that, he has got to, to take care of himself; and if he don't the buyers will be just taking it away from the man because he will be helpless and he cannot protect the farmer. That's why they paid me a fair little salary because I had to know that. Then I bought some too. It is usual and customary for the warehousemen to go to the farmer when he solicits and discuss the crop, and if they did not do it they would not get much business. Of course they do not need that as much up the country. Down in here where the warehouse business is highly competitive, the farmers may be seen by five or six warehousemen every year. They have got to know their business to protect the farmers in Georgia, because he isn't as experienced as they are up the country. It is true that a farmer is called on in Georgia by five or six warehousemen. And then a man who has got in trouble will call on a warehouseman. I have had them do that to me. Some of them have come in and said they had a barn of tobacco—run into me on the street—and says: "I don't know how to cure it. Go and see if my barn [fol. 723] of tobacco is doing all right because it looks like it is as green as grass". I said, "How does your thermometer range?", and he said he didn't know.

I went out and looked over the barn and tested the thermometer and found that it was 15% off. I sent over the branch and put a new one there. Then I just put water in the barn and made it go slow and he got a grand total of twenty-five cents average. That happened to me in one case I know of. I did not charge him anything for that; the warehouse had me employed. I was paid by the warehouse to render that service. I consider that I rendered more than value received for the money I got out of the warehouse. They did not make enough to pay me what they said, I don't think. Anyway, I do know they said they could not pay me all of it. In the ripening of tobacco it should come in in a series as you go farther up, but sometimes you get done curing down here early and sometimes you don't. Sometimes in one place it is early and sometimes it isn't. If it is a dry time the tobacco will not ripen. That's the trouble I had this year. The other people down at Nashville were done curing before I ripened this year.

The climate makes a great deal of difference and so do weather conditions. The company determines the opening of the season, by saying when they will send buyers in. The companies determine when the marketing season in Georgia closes. We thought that the market ought to stay open another week longer than when it closed in Nashville here one year. The house was jammed almost and they sold out and closed before all the tobacco was in and that knocked me for about $800 and knocked King about $2000 on his leaf account. He couldn't sell it and had to dray it clear to Danville. The warehousemen fought, bled and died to stay open until they finished, and King made himself a little unpopular and stormed and got mad and said he would stay open. King done everything he could to hold it open there and all the warehousemen, but all the warehousemen in this town could not hold it open. When he stormed and they [fol. 724] tried, the buyers just said that they had instructions to go to Knoxville or North Carolina, and they cut us off quicker this year than any year they have. That is the company, you couldn't do anything with them. It was the companies and not the warehousemen. The warehouseman is in favor of the farmers until the last bit is sold; I know that is a fact. It cost me $15,000 to build my warehouse out of ordinary lumber, and it was 300 by 90 feet. The only use these warehouses can be put to other than for selling tobacco, is to put cotton in them; that's about all. They put cotton in some of the warehouses here; I think they do down here at the Brick Warehouse. There are two of them, and one has got cotton in it. The others stand idle out of use except when tobacco is being sold; the others haven't got anything in them, I don't think they have. I expect it is true that in the majority of cases the rent received for tobacco warehouses from the selling of tobacco and from the use during the tobacco season is all the rent the owner of the warehouse gets out of his building, except some rent for cotton. That's the major part of it, the most of it. The owner must ordinarily collect in thirty days the usual rent for twelve months' time. These warehouse buildings are pretty expensive to keep and they must keep the roofs especially in repair. I imagine the rent paid for the six or eight weeks is fixed largely on the basis of the value invested in the building. It is my opinion, as a warehouseman, that a warehouseman who owns his house is entitled to a return on the amount that he has invested over the

twelve months' period. If the warehouse is used for no other purpose, then the rent received for selling tobacco is about all he can get. For instance, I will give an illustration. Back there in 1925 we all got the fever on us, so I came down with $30,000 and I haven't thirty cents now. I put that house up in 1925. They came down here, Mr. Peagrem and Mr. Hester, a second cousin of mine, and [fol. 725] operated I think two houses in 1924. That was a mighty good year. They go to work and make a great deal of money and that made me think I could. Mr. Peagrem deserved it because he worked hard. Mr. Oettinger has been down in Georgia and had some money and I reckon made some money, so they go down and give $20,000 for the old Compress Warehouse down there, a frame, just a hull. They go to work and put in a nice floor and repair it and put on a good roof and it cost them heavy. They have got $30,000 in that warehouse and they offered it to me for $15,000. That's what it has done. If they were forced to close down, it would make a hardship on them. That would be just that much money thrown away; it would mean that they could not operate. That is what it would mean if the proper authorities under a law closed their warehouse. If the markets were centralized, the farmer would have to increase his haul, but it would not be much farther than they haul it in North Carolina. In my opinion as a warehouseman, in order for the warehousemen to make money next year under the new rates passed by the Legislature, they would have to reduce the warehouses in half. Both the marketing points and the warehouses. A man does not necessarily trade with the closest store. He goes from store to store until he finds what he wants and he might find the cost varies and go to the store that can satisfy him on cost and quality. That would be true in the tobacco business. For instance, my boy in North Carolina could not get over $200 on a car allowed him up there and he got $370 over at Hazlehurst. Let me tell you how people in Georgia are right here. It was the rottenest sale here ever was in 1933. Hazlehurst didn't do any better than our business. They just weren't doing business. The business people got mad with it and especially the Hazlehurst folks. They got to looking for the best prices. Some of them called 200 [fol. 726] miles in North Carolina to get the best prices. If the warehousemen cannot make money on the charges, that

will effect the sale. It is bound to. When they know they haven't got much chance to make anything, they are bound to speculate and manipulate and the warehouses won't be run right. That's how King made money in Lake City. I went there in 1903 and that's the only way it could be. That was Lake City, South Carolina. That was when it was sold in leaves, and we had to manipulate and do business that way to get a living. Tobacco was selling for three or four cents a pound. It is higher now but it is still hard for a warehouseman to make money. A speculator can't make any money to speak of and none of them except on the big markets. That is just as true in the Georgia belt as in all of the belts, and I have been to them all. The warehousemen are just like the farmers. If the crop is big and the prices high, they do all right, but if not, they don't make one-half. And it's the same way on the farm. I know that B. B. Saunders will lose not less than $5000 at Aberdeen. He told me so out of his own mouth. The warehouse business is the hardest proposition I ever saw and that's more true on a big market like Wilson or Greenville. They work all night, go to work and work all night; sometimes I have been there a week all the time. It requires a lot of capital. I borrowed money generally to last the season through or enough during the season and usually brought some with me. Then I had somebody with me in the business. If the banks would not let you have money, you could not run. Take this fellow King here and his partner. They had to take a partner in with them because he was about busted. I mean King took a partner because he was busted.

Redirect examination:

I made tremendous profits in 1924 in the tobacco warehouse business in Georgia; it was the best year I ever had. That year was good generally among the warehousemen in [fol. 727] Georgia. As a result of that, others came into Georgia and paid big prices for warehouses and went into the warehouse business. I suppose other warehouses were built. That was bad business judgment; they got caught like I did on my farm I bought. I gave twice as much for my farm as for one like it in South Carolina. The people that did that used bad judgment. They will lose in the windup in buying and in over-building warehouses. The farmer will not necessarily pay for all the bad business

judgment by the warehousemen and others interested in the tobacco industry, in the windup. I know that I went and took my medicine the first year. I took my medicine and quit. There are warehousemen who have used good business judgment and who have sold even small tonnages and yet have made money all these years, but some of that was luck—I don't know about Georgia. There's a lot in the ability of the warehouseman as to whether he makes or loses money. There's a lot in how he pushes the sale. Another element and important thing to the warehouseman is the price obtained for the tobacco on the floor. A warehouseman might have one hundred solicitors on the payroll and yet if his price didn't come up he would not get much tobacco; he wouldn't do nothing. There is nothing to the money expended on all this solicitation and these hired people going around soliciting tobacco for the warehouses, not in one out of ten. It is true that the bad times that has been in existence in recent years with the warehousemen was in every line of business mighty near. The farm land I bought was reduced around 50% I reckon. Where farm rent and other rents for business property have been decreased, these tobacco warehousemen have been charging the same rate of rent on their investment on the old good times scale. But they have been hit on tonnage and on bad prices for tobacco and things like that. Then they have been hit by the blue mold. The blue mold also hit the [fol. 728] farmer, but the warehousemen were hit pretty hard too; both the farmer and warehousemen together have. During the last five year period that is true in practically every line of business in some sections in Georgia. But in North Carolina some of the time it has looked like 1919. Down here it has been bad. The fellow who had store buildings for rent, I will admit that has been bad. In general there have been more bankruptcies than in the history of the country. This last five year period has been an abnormal period with which to compare what should be made in any line of business. But I think there is just about as much tobacco planted here as will ever be. The farmer hasn't made any profits, and I haven't made any money in two years. I haven't made a dollar in two years, to be honest. Some warehousemen have cars that look mighty bad. One warehouseman, to my knowing, had a Buick but it looked mighty bad. I don't know whether the warehousemen

stopped at the best hotels in town or not; some of them stopped at the hotel. I can only go by hearsay as to the number of warehousemen that have voluntarily quit the Georgia market. I don't know what caused them to quit. I know what they tell me; they say they don't want a house. Take Jim Easterly, he said he would not have a house back. He told me he was not coming back. Some of them have told me they did not want to come back. I don't know whether they have quit or not. Some of them say they are going to quit. I cannot state that since the rates have been fixed by the Legislature, the warehousemen have been talking about quitting but will keep coming back. They came back and operated in Georgia this year, after the passage of this law. They started operating in Georgia in 1918 under the old rate of charges, and came back year after year until 1927. They [fol. 729] were constantly building more warehouses under the old rate of charges, but I think they commenced building more houses afterwards. There were always enough warehouses to orderly market the crop up until 1927; they increased some years. There has been a warehouse built in Tifton, Georgia which operated this year, which was built and operated after the Legislature passed this act.

Recross-examination:

I know that the validity of the recent act under attack has not been decided. The tobacco warehousemen are not yet informed as to whether they will be forced to operate under the scale of charges prescribed by the act, or under the charges which they have heretofore been making. They don't think they are going to have to do it. I have no way of telling, if this act is sustained and held to be valid, how many warehousemen will come back to operate in Georgia and how many will not. My opinion is they will not all run, but I cannot tell. I can give this information: Mr. Hester operates the Big Sanford Warehouse and manages a warehouse in Georgia, and he and Mr. Hancock told me that they didn't want any house until this was decided. Lots of them have offered to go in with me and run the chance on a house down here, providing this statute don't win. If the warehousemen win, they want to operate and would like to have me help with it. In other words, they offered me an offer if the warehouses won. They were willing to come in if the act was held invalid, and I had a good proposition but I would have had to stay on here and go in with them. Mr.

Hester here especially said he would like to have the house and they came down last year to see the Brick house, but somebody got it beforehand. He said he would like to have it if they did not change the rates and if they changed the rates he would not want it. That is the general talk up in that country. Several told me they would not want a house if the State won. That's just the way they said it. They did not figure the warehouse business was worth anything [fol. 730] here unless it continued like it was. Unless the warehousemen were permitted to charge for their services under the old rates, nobody wants any warehouses down here is what they tell me. Way back in 1925 when people were more or less hysterical in a business way and were building warehouses and creating new markets, the people generally in Georgia were looking forward to a great development in the tobacco industry; that's the reason I was here. I left a good thing. I thought and people generally thought that the tobacco industry would amount to twice as much in Georgia than it has. I thought that by this time we would be selling in Douglas 25,000,000 pounds of tobacco. The industry has not developed according to the expectation of the people at that time. I went to Whiteville, North Carolina, down near South Carolina, near the line, and bought a tract of land there. The country there looked awful and you could buy land out in the country for $3.00 an acre today; but Whiteville jumped up high when they began selling tobacco there. It played out and I lost money there. With that, this country down here began to look good. That was like eastern South Carolina. It jumped up like Whiteville and some of those markets are still good but some of them played out. In the good markets and good tobacco country they wanted too much for their land or too much rent up there. And down here it looked like there was plenty of land and that everything was right, but there has been no development, nothing to compare with what we thought it would, nothing like as great as it looked like it should. But we had good prices this year. The tobacco warehouses in those years were constructed upon the assumption that the industry would grow rapidly, and the people who were then operating warehouses thought it would be the coming tobacco country at the time. Although certain markets such as Bainbridge and Quitman and other points [fol. 731] I mentioned were discontinued, yet more tobacco

warehouses have been built where the companies would send buyers. Also, you take Fitzgerald. It would have had a market if the people had got behind it and got the tobacco raised, but they don't grow tobacco. The matter of whether they will send buyers to the market to buy tobacco when a warehouse is opened is under the control of the companies; one man to every company, four or five men. They are the people who determine whether to send buyers to a market. They built a warehouse at Willacoochee down here, and before they got buyers there it finally rotted down. Mr. Gorman went to making a fight to get a market over there and he spent $10,000 trying to get a market and never got it, because the companies wouldn't consent to it. And his brother is some big authority in New York. You cannot get a market without the companies' say-so. That is a known fact. If you don't believe it, try to get a market without that. I know that because I know what he done and he and I both worked for it. I helped him but I told him that he was going to lose money.

Redirect examination:

The seasonal hazards and the climatic hazards I have testified about directly affect the farmer in growing his tobacco in Georgia. He is the fellow after all that loses by the seasonal hazards; it is hard on him. There may be one warehouse too many here. The five houses run the market and they have been up for some time. They were all built before 1930. I think the last one was built about 1930. They were operating under the old rates, the rates charged for the last few years. The tendency since 1927 has been to overcrowd the Georgia markets with warehouses to where they cannot make money. They have done it here.

Recross-examination:

The seasonal hazards to which I referred decrease the acreage upon which farmers grow tobacco; in my opinion [fol. 732] blue mold decreased the crop. It did not increase the acreage or decrease the acreage that might have been grown if the plant beds had been free from blue mold; they would have grown it if they could. In other words, the farmer has the same farm there and had it that year and could grow the same number of acres in his crop next year and the year afterward if he can get the plants. Some few might have busted so they could not get any plants,

but ordinarily the land is there and the farmer can grow whatever amount he wants to. In 1933 they made a good crop but it sold cheap. Down here at Nashville I understand those people made money. I have found this, that a man that gets a good price for his tobacco don't kick about the charges. When he gets a bad price, he sort of kicks. A tobacco warehouseman has to put up a great deal more working capital than the amount of capital the farmer has to have in hand and invested in the farming operations or that he has to borrow and use in his farming operations. The warehouse- has to spend a whole lot more capital in the operation of his warehouse than the average farmer does in his farming operations. He has got to get his house and he has got to pay for that tobacco until the buyers bring the check to him. It takes a whole lot of money. In other words, a few men can run a warehouse, just a few men are able to run a warehouse and get the backing. I would have had one probably if I could have got the money. In order to operate a tobacco warehouse and finance it during the selling season, the operator of the warehouse has to have a large amount of capital of his own or be able to borrow a large amount of capital to finance his operations. That is true notwithstanding the shortness of the season; you have to do it; got to have it and got to get it somewhere. If there is any lending to the growers, the warehousemen do all the lending. Those warehousemen don't know the farmers so well and I have known them to lend out $4000 to the [fol. 733] farmers and they collected most of it. Some of them farmers could not have got their tobacco gathered if they had not loaned them some money. I, for one, would have suffered if I had not got some money from them. Regardless of the amount of money that the tobacco warehousemen loaned growers, they could not market their tobacco with any degree of efficiency or satisfaction if we didn't have warehouses running or markets. If that situation existed, the Georgia growers just could not sell without a market here, and if they did not have a market here they would haul to North Carolina and other markets and that would ruin my farm. In my circumstances, the growers could not grow it successfully; I would have to go up to North Carolina and grow where the markets are and everybody else would. The curtailment of the number of markets would make a hardship on the warehousemen and

hurt them and some of their friends or people who own warehouse property. But I don't know whether it will make it harder on the farmer or not. On some of the farmers there would be a hardship in this way: they would have to pay more truck hire such as to carry it from here to Vidalia, or some other town, and haul it fifty miles. It will scatter the markets, you know. If such markets as Hahira and Adel and other similar points were cut out, the property of the warehousemen would be worthless.

Redirect examination:

The Soaper Warehouse beat us a little in tonnage. We sold 2,000,000 and the Farmers a little over 2,000,000; there wasn't but 8,000,000 sold here. Taking the warehouse that sold 2,000,000 pounds, I suppose the farmers represented in that two million pounds, small farmers like they are down here, it would be maybe three thousand, just a rough estimation. It takes a right smart investment in lands, houses, barns, mules and guano to make that crop, but nothing like the investment for any one warehouseman. The total in- [fol. 734] vestment of all the farmers patronizing the warehouses would be more than the warehouse. Taking the two million pounds of tobacco that the warehouses sell for the farmers, I expect the farmers would invest an amount equal to the warehouses, and a little over it maybe. In addition to that the farmer has to maintain his investment twelve months in the year, his lands, mules and equipment. He can make other crops, of course, but it don't amount to much. He could not make other crops on the same tobacco land; he could not plant anything on it. I don't know that on the tobacco land exclusively used for tobacco he has a twelve months investment and has to pay taxes and maintain his equipment and mules and barns, etc., with which to produce that two million pounds of tobacco, and that the investment of the three or four thousand farmers exclusively devoted to tobacco is more than the investment of the warehousemen who market it. I would have to figure that out. I would reckon it would be that much or more. I reckon, taking all the farmers, and figuring up the farmers, it is more, but of course they have the land. The warehouseman has his warehouse too, but the farmer's land don't diminish like the warehouse. I suffered about a 50% decrease in the value of my land. The warehouses in Douglas

have diminished more than 50% in value. Take the King & Barker House, they lost more than that; and the Farmers was offered $15,000 and it cost $30,000, which would make it diminish one-half. The warehouse property and investment would diminish more than the farmer's investment would; I would rather have my farm than his warehouse. I gave $10,000 for my farm and I would rather have my farm than his warehouse. I would rather, because I think it is better. I am referring to one of the worst warehouses in town, and the old Green. My farm is not one of the worst farms in the county. I would not swap my farm for one of the oldest warehouses and less valuable warehouses.

[fol. 735] Recross-examination:

If a tobacco warehouseman owns his warehouse, he has to maintain that throughout the year, notwithstanding the shortness of the sale season. If a warehouse is rented, it is rented on a reasonable income on the value of the warehouse for the entire year, notwithstanding the shortness of the sale season. When I spoke of bad judgment of people in investing money in tobacco warehouses, the same applies to people who invested money in farms like I did. It is all the same for farms. It will not go one-half of what you gave for it all the way around. In other words, some of them will go up to more than one-half and some of them you would have to pay one-half for them.

Redirect examination:

The farmer has not anybody down the line to pass his losses on to. I don't know that the warehouseman, up the line, can pass them on down to the farmer. The warehousemen have had a hard time and the farmers have too. We hope to have better seasons and less hard times for the farmers.

J. H. Milhollin, sworn in behalf of the Defendants, testified as follows:

Direct examination:

I have lived in Coffee County thirty-three years. I have been engaged in various lines of business. I have been in the mercantile business, farming, banking business and live

stock business. I farm some, and as a farmer I have grown tobacco. I have been growing tobacco some twelve or fifteen years. I own stock in a tobacco warehouse; eighty-six shares of stock. There are three hundred twenty-seven shares. I am at the present time Senator for the 46th District of Georgia and in the State Senate. I am one of the proponents of the tobacco warehouse charges bill passed by the recent session of the Legislature; I was [fol. 736] interested in passing that bill. I devoted considerable time to it. I didn't devote any time to the study of the tobacco warehouse charges before the introduction and passage of that bill. I didn't make any investigation as to the charges running too high or too low for the farmer before pushing the legislation; I pushed it because it would lower the prices to the farmers and myself, a grower; to myself, a grower, and the farmers and others. Since then I have made a comparative study of it. From the study I have made of the charges of the tobacco warehouses, the present charges used in Georgia prior to the passage of this law, and from my experience in the ownership or part ownership of a warehouse and my experience in growing and marketing tobacco, I think the charges fixed by the law in Georgia are fair both to the warehouses and the farmers. There was not any considerable demand among the people of my Senatorial District, among the farmers and growers, for a reduction in warehouse charges, not to me there was not. I don't know where there was over the tobacco belt a considerable demand to that effect before that time, or not. Since that time there has been quite a demand for reduction of the charges. I don't know whether or not the growers had been to the other representatives and senators making an effort to reduce charges by law in previous legislatures; I don't know about that. I am President of the corporation that owns the warehouse I am interested in, and one of the executive committee. As president and a member of the executive committee, I am familiar with the manner in which the warehouse is leased. It is leased to the highest offer we can get. I haven't had any trouble among warehousemen in getting bids on it. I suppose what actuates a warehouseman to bid higher than another on a warehouse building is that some can operate more successfully and make more money than others can, and a successful operator will give more than an unsuccessful operator. I would think the amount of profit the warehouse-

[fol. 737] man makes would enter into the amount he bids for rent. Our stock in the warehouse is $100 par value per share. My total investment is three hundred and twenty-seven shares at $100 a share. The stock represents $32,700 investment. The warehouse was leased prior to last year. The last lease we had, we got $3500 for three years; $3500.00 a year. That would be $10,500 for the three year period. We leased it for three years. I can give you the amount the warehousemen voluntarily bid for that warehouse for the years 1928, 1929, 1930, 1931, 1932, 1933, 1934 and 1935. We did not lease it on an each year basis. We leased it first for five years with a privilege. I can give what we were paid, what we made and what we paid out, but I will have to give part of that approximately. I haven't the amount of the rental here, but I can give it approximately. We leased the building—cannot state what year it was—for $4600 to run two years is my recollection. I don't remember what years. We leased it for two years at $4600 a year, with the privilege of re-leasing it three years at $3500 a year. That lease is out. They took it up and acted on the privilege, so that for a five year period it has rented for $4600 for two years, and for $3500 for three. The years I enumerated run from 1928 to 1935. I have it here on a percentage basis, or what we paid out to our stockholders from rent for the warehouse besides for those five years. There were seven years. I don't remember the total money rent on it for the other two years. I have the per cent of dividend we declared on our stock. In 1928 we paid out 8%; 1929, 8%, 1930 8%, 1931 9%, 1932 3%, 1933 17%, in 1934 12%, in 1935 14%; a total of 79% over that period of seven years. That is considerably better than the dividends on my farming operations for the same period of time. It will run one-third better, I think, than the dividend on my investment in other business property in this same com-[fol. 738] munity. We don't use this warehouse for anything except during the tobacco season, and then it's a tobacco warehouse. We have had it leased for $125 a year, I believe, to a fertilizer company to store and use for fertilizer in between the tobacco seasons. It is used for various other commodities except fertilizer. It is used for cotton, peanuts and corn. We are supposed to collect for space down there. At this present time we have at least to store cotton at 5¢ a bale per month. I believe that is right. The storage of cotton and fertilizer and other commodities do

not interfere with its use as a tobacco warehouse. We have been successful in having our warehouse used for these different purposes after the tobacco sales season. I am not familiar with the conditions of other warehouses. There is no reason that I know of why other warehouses could not be likewise utilized. I don't think there is any reason why the owners of the warehouse should not do it. There is nothing peculiar about the construction of a tobacco warehouse that prevents it from being used for other purposes and for the purposes ours is used for. I know that one warehouseman was present when the Agricultural Committee No. 2 held a public hearing prior to the passage of this law. Mr. John Bernard, of Greenville, Tenn., was there. He and his partners operate the Red Warehouse in Douglas, Georgia. I don't know about notice being given of the place, but I know there was a public hearing announced. This warehouseman, to my knowledge, was there. I don't know whether there were other warehousemen present or not. Having been in these various lines of business in this community for a period of thirty-two years, and from my business experience during that period of time, I would not think that the period from 1930 to 1935 is a fair test by which to gauge the normal income of a warehouse, because we have had a depression to go through. I think that period represents the worst period of any similar period in my business experience. It would [fol. 739] be merely my opinion as to whether that period has been the worst business period generally throughout the United States, but I would think so. I am not very familiar with the service rendered by the warehousemen and the way they handle the warehousing business and with the handling of tobacco and taking it on the floor.

Cross-examination:

I am a stockholder and president of a corporation that owns the Farmers Brick Warehouse in Douglas. I am interested in just one warehouse. I understand there is another brick warehouse in Douglas, but I don't think it would be termed an exclusive brick warehouse. I don't know whether there is any other tobacco warehouse in Douglas that conducts a general warehousing business other than using the warehouse for a tobacco warehouse, or not. We have quite a good deal of demand for this warehouse for storage purposes. Our warehouse is not full of warehous-

able stuff all the time. At this particular time I think it is. It is full at this particular time, I think, of cotton, corn and peanuts. I don't know whether other warehouses in Douglas are open for that sort of business at this time or not. I am speaking now of my personal knowledge and not from hearsay. We rent to the tobacco warehousemen only for the selling season. The rent we get out of the building other than for the tobacco season goes to the corporation; it all goes to the corporation and goes into the dividends I have testified about. I have never offered to lease it during the tobacco selling season in Douglas to anyone other than the highest bidder. I have got bids from as many people as I could get. As to how the rental of $3500 a year to the tobacco warehousemen compares with other rentals here in Georgia paid by warehousemen would only be hearsay, for I don't know what they rent for. I don't know what any lease is except the one we have. There are four other warehouses [fol. 740] in Douglas. I believe it was in 1932 or 1933 that our warehouse was closed during that combine. The lessees paid the rent to us. I don't know how they got the money. It was closed one season. It was leased to Bernard and Vann that season. They also operated the Red Warehouse in Douglas that year. They kept the doors of our warehouse closed. We paid taxes on that warehouse all the year around, and pay for repairs and for insurance on it. We don't insure the products stored in it at any time. The upkeep of it has been very small. It is a brick warehouse. I cannot say positively what kind of roof it has, but I think it is a composition roof. I am not familiar with the material on these buildings down here, but I am of the opinion it is a composition roof. It requires attention and some expense each year to keep it in its present condition. I would not think it was worth what it cost to build it today, because a new building is worth more than a building used for several years. I cannot say how much the corporation actually invested in that warehouse. I am a stockholder and became so later after it was completed. I don't know whether $32,700 was actually invested in building the warehouse or not. It has depreciated some and is not worth as much as when it was first built. We don't charge off anything for depreciation each year. I am well pleased with an 8% dividend from my investment in that warehouse. It is a corporation and it is carried on the par value of the building. We carry the building at the par value of the stock, and we have not

charged off any depreciation. I certainly don't think it is worth as much as when it was new.

Redirect examination:

I don't think the depreciation on a building of that type would amount to very much. That is not the reason why we have not charged off depreciation. I don't know any special reason why we have not charged it off. I did not quite get [fol. 741] 79% on this investment for a seven year period. 79% is what we paid out in dividends for those seven years. It was eight years, from 1928 to 1935.

F. S. Stubbs, sworn in behalf of the Defendants, testified as follows:

Direct examination:

I have lived in Douglas thirty-one years, I think that's right. I am in the lumber business, wholesale lumber, manufacturing and wholesaling. My firm operates under the style of Stubbs & Stubbs, Inc. I am familiar with a firm here known as the Douglas Manufacturing Company. I am president of that firm. It owns a warehouse. It was built for a fertilizer mixing plant, and later was enlarged into a warehouse and is now used as a tobacco warehouse during the season. Right now, while the Government has got a 12¢ or 10¢ loan on cotton, it is used for storing cotton during the off season of tobacco. That was only for last year and this year. Other than for that, it is used just for a nominal amount of storage, possibly two hundred bales carried over from one year to the other. It is not used for fertilizer; they quit the fertilizer business. We have quit using it for the storage of peanuts and corn. I don't have anything to do with this, or did not until March, 1934. Heretofore I was just a stockholder in it and we took active charge of it in March, 1934. It was never used for a tobacco warehouse until 1930. The warehouse was built down there as a fertilizer mixing plant for the old Douglas Oil & Fertilizer Company. They enlarged it. The information I am giving now is not exact. In other words, I cannot swear to these dates, because I was a stockholder in it and was not actively in charge of it. My own knowledge of the facts about the matter dates from March, 1934. I leased that

warehouse as president on the part of this corporation in 1934. It was leased that year; I don't know what rent was [fol. 742] paid for it. Soaper and Hughes leased it; I don't know that either. There were four of them. That house was leased when it was built and my brother was in charge of it. I don't know the title of it. It finally wound up Soaper and Hughes, but whether Hughes was one of the original lessees, I don't know. Soaper and Hughes leased it for the 1935 season. I don't know what the lease price for 1935 was. We have re-leased it to Soaper and Hughes for 1936, W. H. Soaper and R. A. Hughes, for $4000. The lease was delivered Monday, Dec. 2nd, and was signed Nov. 30th, 1935. I leased it for one year, to the same people who had it leased these prior years. That is, two of the same people. There were four in the original lease. I don't remember the original lessors of it. Soaper and Hughes leased it from us this last time, and this other lease dated back to the original building of the warehouse. They all actually operated it, and it was leased for six years. That puts it back to 1929. I know they had a six year lease on it and that puts it back to 1929 instead of 1930. I don't know how long the two of them have been operating it with the others definitely out. I don't know who was in there. Soaper and Hughes operated it, I think, but I don't know whether those other people in the lease were in it or not; they actually operated it last year to my knowledge. There were only two here year before last. To my knowledge there were only two here in 1934 and 1935. Mr. Soaper's initials are W. H., and Mr. Hughes are R. A. They released it from me for next season under the name of W. H. Soaper and R. A. Hughes. Soaper lives in Henderson, Ky. In other words, we done all out corresponding with him at Henderson, Ky. My brother, Sidney Stubbs, bought a great deal of corn one year, I don't know which year it was, but as fast as he bought it he shipped it right out. I don't think the warehouse was used in any manner for storing that corn. There was a demurrage bill of $3000 on that corn, and when he did buy corn I think he just put it under [fol. 743] the shelter and ran it out in car loads. Whether he used it for storage, I don't know. If I am not mistaken, the value of that warehouse on the books is at $40,000. That is at its present value. I would not take $25,000 for it. I have been offered that. $40,000 is not the lowest

price we would take for it today; we would take less than $40,000. I would value the house at $30,000 on today's market. As a matter of fact we have offered to sell it for $30,000; that is the warehouse alone. It is rented and they are given a reasonable time before the season and a reasonable time after the season to dispose of their tobacco. Approximately two months. We agreed to store all their baskets and trucks the year around for them. It is used the year round for that purpose. Since I have been in control of it, we have used it for other purposes, except for the six weeks or two months. We have to vacate entirely, one hundred per cent, what we have got in there, for the tobacco season. With the exception of that two months' time, since I have been in charge of the warehouse, it has been utilized one hundred per cent of the time. I give them two months approximately, and for that time it is devoted to tobacco; for ten months it is devoted to cotton and other commodities. While this warehouse is utilized as a cotton storage warehouse, it is because the Douglas Manufacturing Company owns a cotton gin, and I would almost say that it is only the cotton we get. We gin it and it is stored in there for the Government. It was an abnormal two years on account of the 12¢ loan. A normal year this year, cotton is not worth more than 10¢ and we won't have any there not more than one hundred bales under the lien. In other words, twelve cents loan, I would say pushed it up and made it extra good storage years, and we carried 250 bales of cotton from one season to the other. It is practically used just for this Government cotton. As a matter of fact, we can store all the cotton we have except for the Government cotton, [fol. 744] in the tin building adjoining that. Except for the Government cotton the warehouse probably would have no value to us from an investment standpoint, and if we have to lose the Government cotton, we would lose it out of the warehouse into the smaller tin house next to it. We would have lost the Government cotton because they ordered it moved out of the smaller towns and were going to close it out, and I reckon they will close it out ultimately. We had shipping instructions on our cotton, but got them to stop it. I don't know whether Mr. Milhollin uses his warehouse for storage purposes or not; I don't guess he does. Year before last we stored our cotton in his warehouse while running the tobacco season in ours. When we moved it out, we moved

it to his warehouse. There is some cotton in it now, but I don't know whether it is full or not. The last five or six years have been abnormal for me. I know the lumber business has been rotten. I grow tobacco. All of those years have not been bad in it; I had two good years. I had two good years and three bad ones. I would not consider that abnormal. Most anything you go into or everything you go into you have them good and bad, and you have to work with that before you. I cannot say that I showed a loss on my farm one year. It has been the hardest period of years in my experience, since I have been in business, 1930 to 1934. 1934 was the best year I ever had in business. 1931 and 1932 were the worst; 1932 was the worst one in the lot, and the worst one in my business too. Things began picking up in 1933, but were still bad. 1934 is the best year I have ever had, that is, for making money. I own other property that rents besides the warehouse. A building across the street known as the Sibbett Building. I own three-fourths interest in it. The investment in that building is $22,500. I don't own any of the properties; I manage them and look out for my wife's property, I collect the rents. The other properties I manage are the Douglas Ice Plant and several stores. I don't know what the rental paid for [fol. 745] the warehouse prior to this year was. Sidney Stubbs, my brother, and A. W. Sykes constructed that house and they had some kind of arrangement in the way of a lease. The lease is recorded down stairs and could be seen there. It is not my information since I have been connected with the business that the rental was $5000 a year. They had six years' use of it for constructing it. It was leased and when they leased it there was not anything down there except the concrete portion of the old mixing plant. The balance of the plant was constructed out of wood except this part that was concrete, the floor and foundation. They constructed the warehouse and put in the scales and got a lease on it for six years. That value of $40,000 was set up on the books when I bought it. I don't know how much of the value they added. That was the old Douglas Oil & Fertilizer Company, and it was sold before the court house door, foreclosed on it. I am familiar with the physical property. I would say they added five times as much space there as there was; that would be about four-fifths of it. I valued it at $40,000. That's the figure I base that estimate on. I

cannot say $32,000 would be the valuation of the work they did compared with the whole building. I don't know what it cost them. If that is true, and they had a six year lease on it, according to the values estimated, they paid a little over $5000 for their rental each year, on that estimate, but the house was wood and frame and concrete and brick. I don't know what per cent of the $40,000 cost they put in there. I don't know whether the Douglas Oil & Fertilizer Company furnished part of the material and them a part of it, or they furnished it all. As a lumber man I know the building could have been constructed much cheaper than $40,000; for about $30,000. The $40,000 includes all the land it is on and includes a concrete base warehouse. I imagine that building cost them $20,000 to $22,000 for what they put in, their part. I estimate the value of their part at [fol. 746] $20,000 to $22,000. They had a six year lease for the investment that they put in the building, and on $22,000 the cost price to them per year would be approximately $3500. The Douglas Manufacturing Company has not benefited from it at all. As a matter of fact it was a dead loss for us for 1934 and 1935. All we did was pay the taxes and interest on the money. Our predecessors were the Douglas Oil & Fertilizer Company. I don't know what the Douglas Oil & Fertilizer Company put in it or Hughes put in it, so I cannot testify that they got the benefit of that amount each year. The Douglas Oil & Fertilizer Company nor the Douglas Manufacturing Company are not in four-fifths of the building as the result of six years' occupancy by the tobacco warehousemen; the creditors have got it so far. It has not been paid off. For the six year occupancy they got the benefit of the credit of the rent each year on the value of the building, and for the six years occupancy they got the benefit of the claim of title to the warehouse. The warehouse is on their land, and their lease expired last November. If Soaper & Hughes put in all the money, that six years occupancy paid for four-fifths of the cost of the warehouse.

P. L. Moore, sworn in behalf of Defendants, testified as follows:

Direct examination:

I have lived in Coffee County thirty-one years, I think. I have grown tobacco; started growing it in 1926. I have

sold my tobacco on the Douglas market. I have my sales tickets for the years 1926 and 1927 right here. I put a mark on there for identification. I sold 20,888 pounds of tobacco in 1926. In 1927 I sold 20,704 pounds. I sold more tonnage in 1926 than I did in 1927. My 1927 crop brought $4,274.19, and in 1926 $5,237. In 1926 I sold more tonnage and it brought a total of more money than in 1927. In 1926 [fol. 747] the charges for warehousing my tobacco was $194.68 and in 1927 $201.86. In spite of the fact that I had more tobacco and got a greater price in 1926, the warehousing charges were more in 1927 for a less tonnage and a less price. I have analyzed here the items of charges that made up the two years. $23.16 of the $194.68 for 1926 was warehouse charges, and $43.48 auctioneer's fees, and the commission in 1926 was $130.99. In 1927, of the total warehouse charges of $201.68, the weighing or warehouse charge was $52.60, the auction fees $42.32, and commissions $106.83. I can identify this batch of tickets as being each and every one my tickets for my 1926 crop and my 1927 crop.

Cross-examination:

I dealt with more than one warehouse, but I think most of it was at one warehouse. It was Sykes & Knott at that time, known as the Red Warehouse. They changed hands a time or two since, but it was what we know as the Red House. I have done most of my tobacco business with them. I cannot say that in 1927 they had a reasonably large stock and it brought an average price of around 19¢. Mine, I don't think, brought as much in 1927 as in 1926. I had lots of tobacco in 1926, but I had the same amount of acreage. I didn't have less tobacco in 1926. I don't remember that the people in the state grew less tobacco in 1926 than they did in 1927 and both crops brought about the same price.

Redirect examination:

So far as I know the charges of the various warehouses on the Douglas market for the years 1926 and 1927 were the same. I think there is a bill in there from Peagrem and Easterly, operating what was known as the Brick Warehouse, which shows the warehouse charges were the same. I was not familiar with the old rate used of charges that stepped up in 1927 from that old rate used in 1926 and before, more than what my bills show there. I am not familiar

[fol. 748] with the rate or scale the legislature fixed in the law.

Here counsel for the Defendants tendered in evidence the two batches of tickets identified by the witness P. L. Moore, which were admitted and marked Defendants Exhibits 1 and 2. Also a statement identified by the same witness in connection with the tickets, which analyzed the charges, which was also admitted in evidence.

W. D. Dickerson, sworn in behalf of Defendants, testified as follows:

Direct examination:

I am Solicitor of the City Court of Douglas. As such official, I have been enjoined as a party defendant in this case. I have lived in Coffee County all my life, 27 years. I worked in the tobacco warehouses at Douglas. I have worked in them ever since 1920, however I have only worked in the offices of the warehouses from 1925. I began the season of 1925 and worked 1925, 1926, 1927 and 1928. I was working for Mr. M. A. Buchanan individually one year and the other years working for Mr. Buchanan and Mr. Wilkins. He furnished fertilizer to the tobacco farmers and took 25 or various percentages of their crop in payment for the fertilizer. It was my duty to be there in the offices and whenever a bill came through and it was a man's tobacco to whom they furnished fertilizer, it was my duty to figure that bill and deduct that percentage and make a record of it. I did that every year during those years I mentioned. I also figured charges for the warehouse. I did that as a matter of accommodation to the warehousemen for three years. They helped me in my work and I figured charges to help them; but the last year I figured charges they paid me for it. Each warehouse contributed so much. Mr. W. R. Frier, of Cartersville, Ga., we were in partnership and he would follow one set of buyers while one set was selling, and I worked in the office and I would [fol. 749] follow the other set while it was selling, and we got a flat amount from each warehouse. We did that in addition to the work for Mr. Wilkins and Mr. Buchanan. In the course of performing those duties I figured the charges on farmer's tickets. Unsally when tobacco is

brought in, it is weighed and put on the floor and it is lifted on what they call the clip tickets, that is the pounds; and the weighman, if he has time, he figures the warehouse or weighing and handling charges and also figures the auction fees. And the bills would come in the office after the sale with those items on it and I would only figure the commission at two and one-half per cent and total the three charges and subtract. But quite often and in every warehouse in a rush, they would leave off the items of warehouse or weighing and handling charges and auction fees in making up the slip—just not figure those charges—and the bills would come into the office with those charges not figured. I then figured them also. Whenever it happened that they would bring in two sets of buyers selling in the same house, in other words, when they started a set on the back side to clean it out, in that event none of the charges on the tobacco sold by one set of buyers were figured on those bills and in that way I also figured warehouse or weighing and handling charges and auction fees in each warehouse in the year I mentioned in Douglas. The charges for 1925 and 1926 were not the same as for 1927 and 1928. The charges were raised in the season of 1927 in all of the warehouses in Douglas. The charges for 1925 and 1926 are the same, or practically the same, as the statutory charge as fixed by the law under attack. Up until 1927, the tobacco warehouses in Douglas, for my own personal knowledge in figuring farmers' tickets, charged the rate of charges the legislature fixed in this law. In 1927 they raised their charges to the amount they have been charging since that time. I know Mr. Easterly, one of the plaintiffs in this case, very [fol. 750] well. I worked in his warehouse. I mean he was connected with the Farmers Brick Warehouse as an operator in 1926 and 1927, and I sat right by him and figured these charges and passed the bills over to him, and he wrote out the checks. I received instructions from him in 1927 about what scale of charges I was to use in figuring charges. He showed me how to figure the new scale of charges inaugurated in 1927. He explained it to me and explained it also to Mr. W. R. Fryer, Jr. It was at Mr. Easterly's suggestion that I figured the higher scale of charges in 1927, and I might say that I looked at all of the tickets. I would go through the clip every morning before the sale to see if any man who owed the man I was working

for had tobacco on the floor. For that reason I looked at every ticket, practically, sold on the Douglas market. I have examined the tickets of Mr. P. L. Moore which have been introduced in the evidence covering the years 1926 and 1927. I examined them after Mr. Moore had produced them, and they were marked for identification, and after he let me go through them. I have done this: I have taken each of Mr. Moore's warehouse tickets or bills for the year 1927, and I have listed what was actually charged to him for the various fees for the year 1927, and beside those items I have listed what would have been charged on each of those bills had they been sold under the pre-1927 scale. I can read this statement here. I prepared a summary of the statement based on the totals on all of his 17 tickets for the year 1927; and I follow that with an itemized statement comparing the various charges on each bill separately. The totals are as follows: the weighing and handling, warehouse charges—may I start over there? The total of all charges by the warehouses under the 1927 scale actually was $201.86. If they had not raised the charges that year and had used the charges they did prior to 1927, the total of all charges would have been $165.48. This shows an [fol. 751] increase of 21.98 per cent of all the charges. I analyzed that to show how much they went up on weighing and handling and how much on auction fees. The commissions remained the same. The only two items effected were weighing and handling, or warehouse charges as they are called, and auction fees. For weighing and handling the actual amount charged under the 1927 scale was $52.62. The amount that would have been charged for weighing and handling, had the pre-1927 scale been used, would have been $21.35. This shows an increase in the weighing and handling charge of 146 per cent. The auction fees as actually charged on the 1927 scale was $42.32. The amount which would have been charged had the pre-1927 scale been used would have been $37.30, and the increase for this item in 1927 over the pre-1927 scale was 13.4%. The commissions for both years being unchanged were $106.83. And I followed that with an itemized statement showing how it was figured for each bill. This paper I hold in my hand constitutes the actual figures from which I have testified, and shows the scale I have figured. I might add

that I have signed each page of this statement. I have examined the tobacco tickets for T. H. Brown for the seasons of 1924 and 1926. They were figured on the lower scale in vogue prior to 1927. I might add this. It is easy for anyone to figure because the main raise has been in the charges for weighing and handling and auction fees and by comparing the two accounts on the two different scales that existed before 1927 and as they were changed in 1927. For weighing and handling they charged 10¢ for all piles of 100 pounds or less and 10¢ for each additional 100 pounds. That was before 1927. They raised that in 1927 to 25¢ on all piles of 100 pounds or less and 25¢ for each additional one hundred pounds. Anyone can readily see that the raise there in weighing and handling charge was in the same ratio as 25 to 10, or an increase of 150%. In Mr. Moore's statement, taking it straight through, due to not figuring fractions and decimals, it [fol. 752] figures 146%. The new schedule inaugurated in 1927 amounted to a 150% increase in weighing and handling charges, and 13.4 per cent increase on auction fees. That represents a total increase of 21.98%, and that is figured on all of the charges together. I might state why that percentage is that low. That percentage is largely determined by the size or amount of the commissions. This year 1927 was the year in which the commissions were large, as those tickets will show. That made the percentage of the increase smaller than it would have been had the commissions been low that year. There is no doubt that since 1927 the farmers are more experienced in raising and curing and handling their tobacco. Demonstration had practically ended when I was working for those men, that furnished the fertilizer. The only reason they got a percentage of the crop then was that some of the farmers did not have enough money to finance themselves, and they were willing to give 25% of the crops to anybody furnishing fertilizer. At that time real demonstration had passed out and there was hardly any and even this system of furnishing fertilizer was passing out. With the men I was working for it ended in 1928, and although that has been some little demonstration in connection with furnishing the fertilizer, after that time there was not demonstration of any kind. I don't know that I am qualified to say there

has been any increase in expenses in the warehousing business in Georgia since 1927, that would justify raising that scale of charges. I know when I worked down there that common labor was being paid about what it is being paid now and all other circumstances were identical. I know of no change. The farmers do not need any help now to grow and cure his crop, and none of them get it. I know, for the farmers on our farm, they stay out there and grow and cure tobacco themselves without help from any one, the tenant farmers. During the period of time when it was necessary for the Georgia farmers to have demonstration [fol. 753] service, the farmers themselves paid their demonstrators. I think the usual fee of the demonstrator locally was 5% of the net sales and sometimes they got 10%, but it was usually 5%.

Cross-examination:

My testimony has been exclusively with reference to the Douglas market. That's the only market I have ever worked on.

Redirect examination:

I know from general knowledge that the warehouses all over the tobacco belt have charged the same scale of charges in vogue during the respective periods in Douglas. They have gone up together and gone down together, but I don't know of them going down. It is my understanding that the warehouses generally over the belt charged the lower scale up to 1927, and when they raised the scale it applied generally over the belt and they all raised it together. I have been on other markets in the warehouse. I guess if one was much lower than the others, you would hear about it, because the farmers certainly would take it there, and I never heard of any place selling tobacco lower than any other place.

Counsel for Defendants tendered in evidence the statement of W. D. Dickerson, and identified by him, analyzing the change in warehouse charges, which was admitted in evidence and marked Defendants' Exhibit 4.

R. W. GOODMAN, sworn in behalf of Defendants, testified as follows:

Direct examination:

I live at Tifton, Georgia. Have lived there since 1902. I am at the present time connected with the Georgia Warehouse Association, in the capacity of Secretary. Have been Secretary since 1930 or 1931. If the records of the Association prior to that time were turned over to me, they were [fol. 754] turned over to me in a box file. I don't know for sure that they were. It is my recollection that they were given to me in a box file. Those records were destroyed by somebody breaking into my office and destroying all my office records. That destruction happened, I think, about 1931 or 1932. A meeting of the Warehouse Association held here in Douglas is the first records of the Association I have. I am custodian as secretary of all the records and minutes of the association. I haven't in my possession any minutes or resolutions or records of the association at this time prior to 1930 or 1931, and I have no recollection of ever having seen them. If they were given to me, they were destroyed in that box. I just have minutes of the various meetings that I have attended. Each one of these sheets signed by R. W. Goodman represents minutes of the meetings held and the transactions had on the respective dates and occasions set out. No, I don't believe all of them are signed either. I don't know what those other copies of letters and memorandums represent without looking. There here are just simply calling a meeting. This is a copy of a resolution passed at a meeting. The others are just notes from which those minutes were prepared. I was not officially connected with the association at any time prior to the dates I have given. I know nothing of any resolution that was passed by the association raising the warehouse charges in 1927 over what they had been in 1926 and prior to that. I have no record of these meetings prior to the date I have named in my possession at all. I cannot say when the Georgia Tobacco Warehouse Association was organized. It was before I went into office. It must have been organized in 1926 or 1927; I don't know. It has been a very loosely organized body; they had no by-laws. I haven't a copy of the by-laws with me. They had none until

the Government took charge under the code and compelled them to adopt by-laws. I haven't a copy of the original charter with me; there is no such animal though. It was [fol. 755] just a voluntary organization operating without a charter from the Superior Court or any other Governmental Agency. What I have here is all of the transactions of the various meetings. Of course I have some cancelled checks and bank statement-. Other than checks and bank statements representing financial transactions, this represents all of the records of the association. I have made a diligent search and I know that's all I have.

Counsel for Defendants tendered in evidence the sheets identified by the witness R. W. Goodman, representing the minutes and the resolutions of the Georgia Tobacco Warehouse Association, which were admitted without objection.

W. H. Vickers, sworn in behalf of Defendants, testified as follows:

Direct examination:

I have been living in this vicinity fifty-nine years and about a week. I grow tobacco. I cannot tell you how long I have been growing tobacco, not the exact years, but just about as long as it has been grown in Coffee County. During that period of time I have been employed by warehousemen to solicit tobacco for the warehouse. That employment was solely for my influence in influencing tobacco to the market for them. They paid me $150 for twenty days. The only other service I performed around the warehouse was pleasure; I got a lot of kick out of it. I was given this employment something like a couple of weeks in advance of the season. I have had solicitation made to me by people who were undertaking to influence tobacco to other markets in Douglas. One man I know solicited me this year. Of course I have been solicited other than that; his name is George Vickers. He claimed it would double pay me, and he would get paid to haul it to the market, to carry it to Tifton. I lived something like thirty odd miles from Tifton, I guess. I am four miles from here. It is [fol. 756] twenty-six miles to Ocilla, and it would run up to

forty odd to Tifton. It is 18 or 19 miles from Ocilla to Tifton. It is four miles from town here to my house. He was proposing to me that I haul my tobacco from four miles beyond Douglas through Douglas twenty-six miles to Ocilla, and then nineteen or twenty miles beyond Ocilla to Tifton, and claimed that the warehousemen would make it worth while because of the influence the warehouse would get from me, and he would get paid. He just told me that I would get pay for it. I told him I never sold any tobacco other than Douglas, and that we had just as good warehousemen in Douglas as they had anywhere, and I could not see where I would gain anything by moving it to Tifton. I have had warehousemen solicit me and not offer to haul it free of charge. I have not had them solicit it and say they would make it interesting to me. That meant, as I felt, some refund by warehousemen, but it was for other places than in Douglas. I usually grow something like 15,000 pounds of tobacco a year. I used to grow considerably more. I don't think I am considered one of the largest growers in the county. I don't know how other people consider me. Usually up until the bad years came, I would say until 1931, 1932 and 1933, I grew around thirty to thirty-five acres, and my average on the land I planted was 1200 to 1600 plants an acre. I have been a little lucky. The weather never got mine. The average acreage in this county, I would say was six to eight acres, counting the one horse farmer as well as the others. My normal acreage, counting the bads years and bad times, was about four times as much as the average acreage. I am told by the buyers for the export and Imperial and Reynolds people that on an average, year in and year out, I grow an unusually good quality of tobacco. They claim I do. My tobacco always brings a fairly good price compared with the average. I made 27.75 cents average this year. The tobacco I sell is recognized as being good tobacco. Growing tobacco as I [fol. 757] have, I know good tobacco. I do grow tobacco extensively. I imagine their intention in trying to get good tobacco on their markets is to expand the price some. I guess I have an unusually large family connection, one of the largest in this part of Georgia. My father was a Vickers and my mother was a Lee. I guess the families of Lee and Vickers run into hundred; it looked like it the other day on my birthday.

Cross-examination:

I am known pretty well throughout the county, I guess. A lot of them calls me by my first name. I did not work for any warehouse last year; I would not accept; I was offered by two. The year I spoke of was 1927 and 1928, back in those years. I was not employed last year. I felt like I might be a help, might be helping to deceive part of my friends and the farmers and I wanted them to go to whatever warehouse they wanted to. I have not accepted employment since 1928. I don't know whether I felt like I had given the warehouse value received when I accepted that money and while I was employed or not. But I felt like it was an unusual cost. I think there is quite a lot of unusual and unnecessary costs put upon the farmers of our county, and for that reason I did not accept for the last five or six years. It is a general practice among the warehouses to hire solicitors, and that's what I think is wrong; I don't think it is necessary. I have been solicited a right smart by other fertilizer companies than the one I finally dealt with, by other agents in that business, by their competitors. It seems to be an unnecessary evil in my opinion. A wholesale grocery house has drummers and solicitors all over the country. We even have the rolling stores and chain stores. We have all those unnecessary evils, as I figure it. Back in 1926, 1927 and 1928, when I was employed as a solicitor, I worked for the warehouse about six to eight weeks each [fol. 758] year. My general way was to say that we had a better warehouse in Douglas and that it was better than the Tifton market and that the Douglas market was better than the Nashville market. I thought they would give them satisfaction. I guess I boosted the man I was working for twelve months out of the year and did not run him down in any way, although I was only out in my car only six or eight weeks. It was mostly a pleasure to me, my trips were; I got a kick out of it. I boosted his business and he paid me; I also boosted the Douglas market. The warehouseman told me to go ahead and use my influence in any manner I might want, and that's what I did to my heart's content. I didn't boost the market all during the year. When the opportunity arose during those six or eight weeks, I did.

Redirect examination:

We have independent people here that buy tobacco. Take one of these fellows, say the Austin Company, they buy it other than at the warehouse. They do not operate after the market closes, but there would be a possibility of their buying it. To the general farmer throughout the tobacco belt he has no market except the warehouse floor. In that manner, in my judgment the tobacco warehouses are a monopoly. As I see it, and as I have actually come in contact in my different accounts with the different warehouses, all of the charges are about the same for the different warehouses I have visited, and so I consider it a monopoly because it is combined interest anyhow. The farmer has no choice to shop around and get his warehousing done at a cheaper price. In buying groceries or fertilizer and other things, they can generally shop around and get different prices. I never have known it to fail yet. If there is any posted scale of charges at the warehouses I have visited, whereby the farmer can know what definite scale he is charged, I do not know about it. There is nothing on the [fol. 759] bill or ticket the warehouseman gives you to show what the scale of charges are; not until after you get your charges figured off and your check, except the per cent; that's the commission part. The farmer doesn't know what per cent or charge they are making for weighing and handling and auction fees until he gets the bill. The scale is not on the bill. He just knows that he has paid so much.

Recross-examination:

Each one of the items that go to make up the warehouse charge is on the bill the farmer gets, that is, the auction fee so much, warehouse fee so much, and commission so much, but they write it in. I have noticed on my bills something in this manner sometimes—auction fee so much and weighing fees so much and at other times they would be different because it is according to the poundage. You may have 150 pounds on one and a different amount on another, and sell it out and it shows a variance; so you don't know what they were charging. I never had a warehouseman to tell me the scale of charges. I never asked him; never questioned the other man's authority.

D. M. THOMASON, sworn in behalf of Defendants, testified as follows:

Direct examination:

I was reared in North Carolina. I live now out here about four miles from Douglas, Ga. I have lived in Coffee County seven years; I am thirty years old. I have worked in tobacco in North Carolina since I came to Georgia; I did not work in it before in that state. I worked in it in South Carolina. I am familiar with the type of tobacco raised in Georgia, North Carolina and South Carolina known as flue cured bright leaf tobacco. It is all about the same. They don't carry the tobacco to the warehouses in North Carolina like they do in Georgia. They carry it on a stick, graded and tied in bundles. In Georgia they take it to market loose [fol. 760] leaf. I have worked about the warehouse in unloading and taking in and weighing tobacco in the warehouses as a common laborer. It requires more work in North Carolina and South Carolina in unloading, weighing and taking tobacco in the warehouses than it does to handle it in Georgia. They bring it in up there tied up in bundles and put on a stick and they take it up stick by stick and pack it on the baskets. It requires about four to one more time to take it off the sticks and pack it on the baskets than it does the way it is handled in Georgia. In Georgia when they bring it in loose leaf, most of it is in cotton sheets. They bring it in, take it off the truck, dump it on the basket and weigh it and put it on the floor. They turn the whole pile upside down on the basket, turn the whole grade over and it is put on the basket and it is done. The operation of unloading, weighing and handling of tobacco in North Carolina and South Carolina, where it is tied, requires more labor than it does in Georgia where it is untied. In Georgia, if a truck came in there and they had ten hands, 8000 pounds of tobacco would take about thirty minutes to put it on the floor. The same number of hands in North Carolina can't work at the same truck. They work four men at the same time and it would take three or four hours to unload the same 8000 pounds in North Carolina. They have mighty few sweepings in North Carolina and South Carolina, where it is tied on the stick. The amount of floor sweepings a day in North Carolina and South Carolina, where it is tied, always depends on the size of the house. If the houses are the same size as the houses in Georgia, if

the house compared in size, it would amount to 40 to 50 pounds in North Carolina and South Carolina; in Georgia it would be anywhere from 500 to 700 pounds for the same sale for the same size house. I worked in Soaper's Warehouse here this year. When we had a full house, and we did for the first few weeks, I would say the average floor [fol. 761] sweepings were 700 pounds to 1000 pounds a sale. As to what that means in dollars and cents would all depend on how they get it up. Some days they will take a mop and drag it up, and some days they would and pick it up. If you picked it up, it brings just about as much again as if you drag it up. It will run seven to twelve cents a pound. It will run $50 to $100 a sale, something like that. That goes to the warehouse. If the common labor don't work at a warehouse no more than they did where I was, the cost of the common labor would be enough to take up the floor sweepings. I have heard that the warehousemen figured they can pay the common labor out of the floor sweepings in Georgia. I heard that from Harold Veasy, leaf man at the Soaper Warehouse here in Douglas. He handled the leaf account for Soaper Warehouse where I was working. The value of the forty or fifty pounds of sweepings collected a day in North Carolina would be 20¢ to 25¢ a pound. They are picked up in bundles and not dragged and are not stepped on like they are here. On the same tonnage of tobacco, if sold in a North Carolina warehouse, the warehouseman realizes from $8.00 to $10.00 on a sale, whereas the Georgia warehouseman would realize $50 to $100. They don't have to use any more scales in North Carolina than they do in Georgia for weighing tobacco, not the same size house. They don't have to use any more trucks to operate a warehouse there that I know of; not in those I worked in. They don't use more trucks in the one in Douglas that I worked in than in North Carolina, as I know of. For the same size houses in Georgia and in North Carolina, the night crews are larger in Georgia than in North Carolina. They don't bring it in as fast in North Carolina as they do here. That takes larger crews here because they bring in so much more tobacco than they do up there. In the warehouse where I was working in Douglas, they used from six men up. And they generally took the day crew they had [fol. 762] for unloading trucks when the sale started to get up the floor sweepings. Of course some time maybe they took on some extras to do that because tobacco was coming

in and they were busy unloading trucks and for that reason had to keep on. They don't have to use any more weigh men in Georgia than in North Carolina for the same size house. If the warehousemen in Georgia demonstrate and show the farmers how to grow and cure tobacco, I never saw one. They grade it when it comes in. They paid me $1.98 a day for twelve hours as a common laborer. None paid any lower than that as I know of. I got $2.50 in North Carolina. Common labor here is cheaper than it is in North Carolina. They hired me and other common labor by the hour. I got $1.98 every day I worked down there. I worked twelve hours for that $1.98. They didn't keep the common labor on the job when the house was filled up and while they were waiting for a sale, not all of them. They paid their common labor only for the hours that they made.

Cross-examination:

I have not worked every year for the past seven years in tobacco warehouses. I worked last season with Soaper. The year before that I worked for McLean's Warehouse. I worked one year for the Red Warehouse, John Bernard and Godfrey Vann. That was about the year 1929. Those are the only years I worked in Georgia. I worked in North Carolina last season, but it was not for the warehouse. Not the same sort of work I have been testifying about here; I worked for a different man. When I got $2.50 a day for a day's work in North Carolina, that was in 1930. I got 25¢ an hour. In 1934 I got $2.00 a day here. The code had not come around then. Maybe it had; anyway I got $2.00 a day. It was on the hourly basis then at 22½ cents an hour. Since then it has been 18¢ an hour. That is what was customarily paid by all of the warehouses I ever worked for. I have never done anything around the warehouse except common labor. I never done no unloading of trucks, myself. [fol. 763] Most of mine was getting up the leaf and handling the leaf account. I didn't keep the records on that. I just helped the man in charge of it. I have been testifying from just estimating as near as I could. I cannot say exactly to the pound they got a day; I could not do that. In Georgia the warehousemen hire a right smart of help to unload the farmers' trucks for them, and they hire a lot of it just to pull the tobacco that they don't need. They do hire a lot of that to unload the farmers' tobacco. In North Carolina some of the farmers prefer to unload his own tobacco.

The farmer wants to arrange it on the basket exactly like he wants it there. The laborer's work there doesn't consist altogether on taking the basket on the floor. Some of it is done. If a farmer wants to put it on the baskets, they furnish a man on the truck and one on the floor to handle it. Some of the farmers here do it like they do in North Carolina; put their own tobacco on the floor and are only furnished part of a crew. Most of them do not though. In Georgia there are more men employed helping the farmers unload their tobacco, and then for the amount of tobacco they handle during the hours of a day.

L. W. NUTT, sworn in behalf of Defendants, testified as follows:

Direct examination:

I was reared in North Carolina. I was born there and I stayed there until I was 29 years old. I have been in Georgia eleven years. I never worked around a tobacco warehouse as a hired man; never worked for a salary there. I grew tobacco and marketed it there. I have been around tobacco warehouses while they were unloading it, all my life. I have never worked in tobacco down here in connection with unloading; never worked for the house. I unloaded tobacco here and marketed it just like I did up in North Carolina. It would not take as long in Georgia to unload the tobacco, put it on the baskets, weigh and put *it* [fol. 764] one thousand pounds of tobacco on the floor, as it does in North Carolina. A pile of tobacco weighing one hundred pounds in Georgia would be handled all at one time within just a small length of time, while up there you grade it and you have got to take it off the stick; first, you have got to take it off the truck or wagon or vehicle and it is hauled or packed on there on sticks. It has to be slipped off the sticks and packed on the baskets by what you might say is one-half a stick at a time. In the common labor required to weigh and handle the tobacco in Georgia it takes more men but less time than it does to handle the same amount of tobacco in North Carolina. I could not see much difference in the farmers assisting in Georgia and in North Carolina. The warehousemen or his crew do most of the work in both places.

Cross-examination:

I have never run a warehouse. I made my statement according to the time it took me to unload my own tobacco and in handling my own tobacco. I unload my own tobacco and handle it. I unloaded it in North Carolina and unloaded it in Georgia by the warehouse. The warehouse unloaded it in Georgia. The warehouse didn't unload it in North Carolina. I helped them just like I helped them here. I helped them here. In North Carolina I wanted to see my tobacco being arranged for sale on the floor. It might happen in some cases in Georgia, where the average grower hasn't the same experience I have had, that he would drive his truck up to the warehouse and turn it over to the warehouseman to put it on the floor. That hasn't been true in my own case. That is because I know how to grade and handle it. I want to see it arranged, and see that it is graded properly and put on the floor correctly. I pay attention strictly to that. I see that it is put where it is convenient to put it, and watch it when the warehousemen fixes up my baskets, and I help unload it or see to it.

[fol. 765] Redirect examination:

There isn't much difference in the amount of help the grower gets in North Carolina and Georgia; I do not see much difference. It will take the average intelligent farmer who has not grown tobacco, five to seven years, five years I will say to learn how to grow it. I don't know how long they have been growing it in Georgia. I have been here eleven years.

Recross examination:

I don't feel like I know all there is to know about it. I learn something every day; there is plenty to be learned. My neighbor learns something from me and I learn something from him. We had heard of blue mold prior to 1932, but we had never learned much about it and don't know too much now.

Redirect examination:

It is a fact that nobody ever learns everything about anything. In five years an average intelligent man can get along fair about growing tobacco and curing it.

H. H. Williams, sworn in behalf of Defendants, testified as follows:

Direct examination:

I live in Wake County, N. C. I grow tobacco up there and market it on the market through the warehouses. That is bright leaf, flue cured tobacco. This is my eleventh year in Georgia. I have grown tobacco and marketed it and know the detail treatment it receives in marketing it. I have never worked in a warehouse. From my experience in taking tobacco to market in North Carolina and in Georgia and marketing it, I will say it takes four times as long to unload and weigh and put on the floor one thousand pounds of tobacco in North Carolina as it does in Georgia. We bundle it in North Carolina and put it on sticks and pack it down and it is packed on the truck or the vehicle to take to market. [fol. 766] When it reaches the warehouse we take up these sticks one at a time and a fellow pulls off that much maybe, one-third sometimes, and one-half of a stick sometimes, and place it on his basket and continues on through with it that way, and it would be very heavy tobacco to average ten pounds to the stick. Now, in Georgia I have never *have* carried any to market in sheets. I always put it on the baskets. I have been fortunate enough to have baskets to put it on. I have carried mine there on baskets. For those who do not have baskets and carry it there in sheets, they just dump it on the baskets in Georgia. That is just one operation, and they let it go. In order to unload and put on baskets and weigh and put on the floor one thousand pounds in Georgia, it takes less labor and causes less expense than it does to put the same amount of tobacco on the floor in North Carolina. From my experience and observation from marketing tobacco in Georgia and North Carolina, where the farmer carries the tobacco to market, the service rendered by the warehouseman in unloading it and putting it on the floor is about the same so far as I can see it. In other words, if I were marketing tobacco here and up there, I would do just as much here as I would up there. That is true of the average farmer in Georgia that I have observed carrying his tobacco to the warehouse.

Cross-examination:

In North Carolina it is a great deal more work for the grower to bundle and tie and grade his tobacco. That's the

reason I am in Georgia. More work is done by the farmer in North Carolina than in Georgia until he gets to the warehouse. I don't know whether the warehouseman doesn't have as many helpers to help the farmer in North Carolina when the grower gets to the warehouse, or not; of course, it don't take as many at it does in Georgia. In other words, take a truck with eight thousand pounds on it, which they are doing up there now, eight to ten thousand pounds, it will take anywhere from four to five hours to get that tobacco [fol. 767] on the floor. About four men puts it on the floor, or as many as can work it at the time. I brought one time over here eight thousand pounds and I had it on the floor so quick I hardly knew it. The baskets averaged around four hundred pounds. I remember that because I was looking at my bills the other day. I remembered it anyway but I happened to pick up my bill just the other day. I think we put that tobacco on the floor in thirty minutes. There were about eight or ten helpers; the warehousemen furnished all those. In North Carolina the warehouse furnishes all the help to unload the truck and place the tobacco on the floor. Of course if you want to help you can. It just depends on the man. If you want to go out and work, it is up to you. Nobody would stop you. In North Carolina the growers go up with their tobacco to the warehouses and are intent and anxious to see that their tobacco is made ready for market as they want it. They have just one way of marketing it here in Georgia. It just depends on the man as to whether he sees about putting it on the floor. Sometimes a man might think he knows how to look after it, and might make a mistake. I have seen folks that way. I have seen them even nest it, and that won't do. That is putting the sorriest tobacco in the middle. And there can be no rocks. I don't know how many tobacco growers in Coffee County have moved from North Carolina and have grown up in the raising of tobacco in North Carolina, as compared with those who grow tobacco in Coffee County who were reared in Georgia. Of course there are several. The large majority of growers are native Coffee Countians. There is some just as good growers who have lived in Georgia. There are just as good growers in Georgia as come from North Carolina. There are very few North Carolina people down here growing tobacco compared with the total number that are growing tobacco.

Redirect examination:

If I unloaded eight thousand pounds of tobacco in North [fol. 768] Carolina, it would take four men working four to five hours. If you unloaded eight thousand pounds in Georgia, it would take eight to ten men, working thirty minutes; I think you can do that. The warehousemen furnish the men in both instances to help the farmer. I am in partnership with Judge J. W. Quincy in tobacco growing.

Recross-examination:

The farmers in Georgia, due to the shortness of the season, bring their tobacco in at all times, day and night. In North Carolina, the early season or first month of tobacco selling, they rush up there as bad as they do here. The rush up there is as bas as it is here. I would say three weeks in Georgia will consume the rush, and up there it would be two months, eight weeks. I don't know that the warehouses in Georgia have more common labor than the warehousemen in North Carolina; I have never worked in one. I have been in North Carolina in eleven years; I was up there this fall. I attended the market. I don't know that there is more common labor actually employed in Georgia in the warehouse than in North Carolina. I think possibly there is a little difference in the prices. I think the number of common laborers used in Georgia warehouses as compared with North Carolina warehouses would compare about the same for that period of time while they are in the rush. I don't know that it is during the season.

Redirect examination:

I would not say whether the warehouses in Georgia will sell as much tobacco in three weeks as the same size warehouses in North Carolina sell in two and one-half months.

D. M. Thomason, recalled for the Defendants, testified as follows:

Direct examination:

Part of the time last season, the Soapers Warehouse had somewhere around fifteen hand trucks for the day crew. I [fol. 769] cannot say how many they had for the night

crew; I was not there. The total number of trucks they had was fifteen. The night crew would not have used any more than that. I don't know the size of that warehouse. Some of the warehouses in Douglas, the Red Warehouse and the Brick, did not use nothing to compare with the number of hand trucks used by the Soaper. They had about ten. The Brick did not have over five, and the Red Warehouse ten. I cannot say how many hand trucks the O. K. Warehouse uses. I cannot say. The Green uses something like about the Red, about ten trucks. At the Soapers Warehouse they used around about fifteen common laborers on the average day crew there. Part of the time they were all engaged in unloading and putting it on the floor, and then again all were getting up leaf or sweepings.

J. A. Godwin, sworn in behalf of Defendants, testified as follows:

Direct examination:

I was reared in South Carolina, and grew tobacco up there. I carried it to market and marketed it up there. I stayed five years in Georgia, and went back home and stayed seven years. I have just moved back to Georgia. I grew and marketed tobacco while I was in Georgia. The tobacco grown in South Carolina is the same kind of bright leaf, flue cured tobacco they grow in Georgia, about the same thing. In South Carolina they tie their tobacco to carry it to market. They carry it in bundles put on sticks. From my experience in marketing bright leaf, flue cured tobacco in Georgia and South Carolina, I would judge it would take three quarters of an hour to unload eight thousand pounds of tobacco in Georgia and put it on the floor. You can work eight men very well. It would take eight men about thirty minutes to three quarters of an hour to unload it in Georgia. It would take anywhere from three to five hours to unload [fol. 770] the same eight thousand pounds of tobacco in North Carolina, and it would take around six men; I meant in South Carolina.

Counsel for Defendants tendered in evidence letter from Garland C. Bagley, State Statistician in the Department of Agriculture of Georgia, dated Sept. 24, 1935, setting out

a compilation of the number of pounds of tobacco sold in the Georgia markets, together with the average price per pound for the different years, beginning in 1917 and ending in 1935, inclusive, the compilation for the years 1917 through 1921 inclusive being from the United States Year Book and for the years 1922 through 1935 both inclusive being from the records of the State of Georgia, which letter was admitted without objection and marked Defendants' Exhibit 6.

[fol. 771] W. N. BURKETT, sworn for the Defendants, testified as follows:

Direct examination:

I hold the official position of Tax Commissioner for Coffee County, Georgia. The offices of Tax Receiver and Tax Collector were combined to make the office of Tax Commissioner. I have here the tax digests of Coffee County for the year 1935. Oettinger, King and Barker returned real estate $7000 and stock and merchandise $500, making $7,500 returned; Bernard and Vann returned real estate $8,150, and baskets, I guess, $330, making $8,480 altogether. The Growers Warehouse, McLean and George, returned real estate $7,500 and personal property $300, which makes $7,800. J. M. Easterly, of Greenville, Tenn., and Mr. Frank Emerson did not make a return for 1935; they do not appear on the digest. The names W. H. Soaper and R. A. Hughes do not appear upon the tax digests for 1935. The valuation of the property returned by the Douglas Manufacturing Company, their tobacco warehouse leased this year by Soaper and Hughes, is $7,500. There is $3,000 personal property in that return but that is not tobacco warehouse property. That is machinery in the cotton gin. The only warehouse property returned is returned for $7,500 and that is realty. The returns for the Farmers Brick Warehouse is $11,000 real estate; that is all in the return. We try to get 60% of the valuation at which property is returned for taxation, or we ask for 60% of the valuation on real estate and other property for taxation in Coffee County. If the return of Oettinger and King, realty and personalty, at $7500 is 60% of its actual value, its actual value would be $12,500. The actual value of the Bernard and Vann property, realty and personalty, would be $14,133, and the Douglas Manufactur-

ing Company property would be $12,500. The Farmers Brick Warehouse property would be $18,333.

[fol. 772] Cross-examination:

I would not be able to state what the Doucoff Hotel is returned at, unless I got the original return, because it was returned by Mrs. Slater and it was listed on the digest with some other city property, with some other valuations. I will get the original return. The returns shows $23,000. Mr. R. E. Currin's farm land is valued at $1,350. Mr. W. H. Vickers farm lands, containing 485 acres, are returned at $2,645. The percentage in relation to the value of farm land returned should be the same as to other property of the type applied to tobacco warehouses; that is what we asked for. I cannot say whether it is or not. We have tax assessors here that assess property for taxation. We have tax equalizers. They attempt to equalize the returns and the values on lands on a percentage of 60% of its market value. The Doucoff Hotel, which was returned for $23,000, is located across the street from the court house and is in the center of the city of Douglas.

Redirect examination:

I was here present in Douglas when the Union Banking Company building, just across the street from the Doucoff Hotel and the court house was sold recently. I don't believe I recall exactly what that building brought. I believe it was $27,500; I am not sure about it. That's what it seems to me. That is approximate. I am not an expert on valuing buildings, but I figure the buildings would be about of an equal value. In fact if I were purchasing one of the buildings, I would rather have the Union Banking Building. The Union Banking Company building is the most modernly constructed store and office building and one of the largest in Douglas. It is the most centrally located.

Recross-examination:

The scale I spoke of was at public outcry before the court house door, under power of sale, I believe. I cannot say [fol. 773] whether the property was bought by the mortgagee or not; it was sold. I cannot say as to who sold it or how it was sold. I don't know what the claim against it was.

Redirect examination:

I understand it was sold in the liquidation of the Union Banking Company, and that Mr. Milhollin bought it. I do not know that Mr. Milhollin bought it. There was spirited bidding on the building by people from all over South Georgia: several bidders bidding on the building.

H. J. PRANCE, sworn in behalf of Defendants, testified as follows:

Direct examination:

I am connected with the Agricultural Extension Service of the Government. I am in charge of their operations in Coffee County, Georgia, as county agent. Government control of flue cured bright leaf tobacco was inaugurated in the spring of 1934. 1934 was the first year. 1935 was also a year in which this plan was carried out. We have contracts now signed for this County, I would say, representing 95% of the growers for 1936 and to 1939. The purpose of the Government control program, as we understand it, is to better farm conditions, raise the prices of farm products nearer in line with the things the farmer has to buy and by putting the farmer in a better position in reference to other industries. I think the purpose behind the movement is to stabilize the price of tobacco, of course. So far as making an effort to peg the price at any definite figure, I don't think the Government had that in view. I do think this, and this is brought out in the 1936 to 1939 program. There was an effort in formulating the program to bring the prices of tobacco up nearer a parity. That parity might be 20 cents, it might be 25 cents, it might be 15 cents. The parity naturally means and is intended to bring to the grower a fair price; that is a fair price for the tobacco [fol. 774] that the farmer sells in proportion to the things he has to buy. Of course I cannot say what tobacco will sell for. There might be conditions that will come up that would overthrow the purpose of the program, but the purpose of the program is to hold down production to the point where it will be around possible consumption or due to the feature of that control of acreage to hold production to where the output will be also the amount of possible con-

sumption. They naturally assume in those circumstances that the price will stay up above the cost of production. The purpose of the program is to reduce the quantity of production or control it and keep it in line with the demand to keep up the price. The farmer received a high return for his tobacco under the program in 1934 and 1935, higher than he did from his tobacco in the two preceding years. The Georgia record is all I have any record of, and I haven't the actual figures for the entire 1933 crop, or I should have said the 1932 crop. The figures I have for the 1932 crop shows an average of 8.30 a hundred. The average for 1933 was 11.30 a hundred, plus the Government benefits which amounted to approximately 2¢ a pound that was paid by the Government. That means $8.30 a hundred pounds or 8.30 a pound, and $11.30 a hundred, or 11.30 a pound. The Government benefit of two cents a pound did not go to the warehouses. The 1934 average price was $18.73 a hundred, and they received an additional benefit and of course that was the rentals and adjustment payments which would bring almost an additional three cents a pound. To *the* exact, the Coffee County figures ran $1,062,810.04. The Government is also trying to improve the quality of tobacco by having each farmer cultivate a smaller acreage and tend it more carefully. That is part of our program and we try to stress that point with the farmers, that with this reduced acreage they can make a better — thereby sell the tobacco for better prices. If the total program is effected, it will eliminate over-production. If the largest factor in the ware-
[fol. 775] houseman's return is a two and one-half per cent commission on the gross sales in dollars of tobacco, the warehouseman is likewise secured of a more stable future income and a larger income in comparison with the pounds sold. That might be illustrated by the figures of the first year for the control program here. In 1933, of course, there was no control program so far as the Georgia market was concerned until after the tobacco was sold. Of course we benefited from the sale in an equalization payment during 1934. The crop in Georgia sold 59,288,407 pounds in 1933, which brought $6,125,047.03. In 1934 the control program reduced the acreage and reduced the quantity to 33,318,086 pounds which brought $6,642,562.79. That was a little better than $500,000 more than the 59,000,000 pound crop of 1933. In other words, that was a little over one-half of the quantity bringing more money. The warehouseman's 2½%

commission in 1934 would be larger than they were in 1933 even though the warehousemen only handled about two-thirds or one-half as much tobacco in 1934 as he did in 1933.

Cross-examination:

I have been County Agent of Coffee County seventeen years. There is no law or program that I know of that can be or could be effected to control the rain and seasons in growing tobacco. The climate still has a great effect on tobacco production and any other form of crops. The blue mold that hit this section in 1932 had been known before. It was a known disease but it was unexpected. The Georgia sales of tobacco produced under the Government program in 1935 were reported at 70,759,124 pounds, and in 1934 the poundage was 33,318,086. The allotment for acreage in Coffee County and Georgia generally was not doubled over the 1-34 allotment. It was supposed to be about a fifteen per cent increase. The 1935 season was not [fol. 776] the smallest acreage we have ever had in Georgia. The acreage was larger in 1935 than in 1934. I might qualify that statement. In 1934 we produced 70% on the basis of allotments and in 1935 we are supposed to have produced 85%, but we were permitted to produce 90%. Most everybody produced 90%. The yield in 1935 was very heavy per acre on the tobacco planted, one of the best yields we had in years. That was due to perfect climatic conditions. Under a government program there is definite assurance that we are going to have approximately the same production each year; under the government program there is an allotment in pounds as well as acreage, and a grower under contract could sell only a limited number of pounds tax free. Above that, he might sell additional poundage by paying a tax. Of course that restricted sales to some extent. For example the man who had a poor grade of tobacco could not afford to pay the tax and sell it, while a man who had a better grade of tobacco did pay the tax and sell additional poundage. The allotments are not an absolute guarantee, but it certainly helps in restriction. It cannot guarantee production. The climate, the diseases and the elements are still things that no program could get around. The validity of the Government control, the validity and constitutionality of the Acts is under attack in the courts. I don't know that the effectiveness of the government control is. I cannot say that if the laws are declared unconstitutional,

the whole program will depend on voluntary co-operation. The announcement by Secretary Wallace is that so far as the Triple A is concerned, that new legislation has already been prepared to be offered as a substitute and to take its place. That's the only way I would know to answer that. I presume that in the final analysis, assuming that such control is constitutional, the effectiveness of the control would depend on the co-operation of the farmers, because you have got to have the co-operation of the farmers before you can put a control program into effect. In my seventeen [for 777] years work, there has been a definite cycle or repetition of good and bad years in tobacco production. Of course they do not come with any strict regularity, but seasons and crop production and yields, most all of those things do go in cycles. I would say the time between the best yields in Georgia is five to seven years. Every five to seven years Georgia has exceptional yields, and every five to seven years they have low yields. That has been true ever since tobacco has been grown. I know nothing of the climatic conditions of the old belt, in the Carolinas. We feel like climatic conditions in Georgia are as well suited to growing tobacco as any section. That's our opinion. I don't know anything about the old belt, nothing except these market reports is all.

ALEX HILL, sworn in behalf of the Defendants, testified as follows:

Direct examination:

I was born in North Carolina. I have been farming all my life, about 49 years. I have grown tobacco since I was nine years old in North Carolina, and in Georgia I came here growing tobacco in 1916. I have worked with warehouses ever since I was ten years old. I commenced with L. P. Tapp, of Kinston, N. C., and in fact I grew and sold the first pound ever sold in Kinston way back there when I was nine years old; and for about two or three years after they had a market I was field man for him, drummer, go out and solicit trade all over the country. He furnished me a horse and buggy to ride around. I have worked for them too as floor manager, putting the sales on the floor, and I trucked tobacco for him and rolled it out on the floor. That

was common labor, and I have done just such work here. I have been floor manager and drummer and I have trucked it out and done anything that came to hand while working [fol. 778] on the sale. I have been employed by McLean and George, J. H. McLean and R. A. George, and Knott and Sykes running the Red House here, and I have worked for Peagram and Hester. They operated the O.K. here, and I have worked for Soaper & Hughes. That's the only ones I worked for here. I worked for a warehouseman this past season. I worked for Soaper and Hughes three years. I was up in North Carolina last year during the sale. Six years ago I was up there. I go up there every four or five years, and stay a week to fifteen days, something like that. I am pretty familiar with the services in handling and weighing tobacco performed by the warehousemen in North Carolina and in Georgia. I have weighed and handled it myself for the warehousemen. I have hauled tobacco into the warehouses to be sold and have seen how they do it. I think it requires a little longer work in North Carolina with less labor to handle and weigh tobacco, than in Georgia. It takes longer because it is handled stick by stick. It is graded and tied up on the sticks and the warehouse furnishes you a man to put it on the truck after you have taken it off the stick and to place it wherever you have got to place it on the floor. A man stands on the floor and cuts that stick in half and takes it off and lays it on the basket, and then takes off the other half and does the same. They furnish a man to take it on the floor and in that way they might be running three or four different men's tobacco at the same time. That requires anywhere from nine to twelve men and they have a weigher and floor manager and book man. Here we will have somewhere around in the rush maybe twelve to fifteen, sometimes eighteen men, and it is unloaded by each grade at the time. It is in sheets and it don't take quite as long but it takes more men in the rush that way to put it out for sale, because it is done in a few minutes. I have done it in that fashion myself. They do it pretty fast in North Carolina but it takes them longer up there to put it on the floor. [fol. 779] When a truck comes in in Georgia, it brings it in in sheets and they dump a sheet on the basket and take it off. The whole grade is put in that basket because the leaves are loose. It is true more labor can be used in Georgia for the reason that more truckers can be used. In

weighing and handling tobacco up there, the truckers have to wait until they place the tobacco on the basket and arrange it before they can take it on the floor. They have to stand there and wait, and that's why I said it took longer. You don't need and can't use one half the number of truckers as they can here in Georgia. In North Carolina you have to have good experienced men and here you can work anybody from nine years old on up. He could do just as good as a grown man could. I have seen truckers taking tobacco on the scales and to the floor in Georgia. A whole line of truckers can run up to a man's wagon just as fast as they can dump the sheets and then set the baskets on the truck and take it off to the scales and to the floor, just like clock work. In Georgia they use more truckers, they can use a lot more here than they can in North Carolina. In North Carolina they paid the common labor last year when I was there $2.50 per day. We paid here $1.50 and the highest was $1.80, depending on the hours they made and there they got the straight time in North Carolina. In Georgia they use them when they needed them and then let them off when they did not, cut them right off as soon as the rush was over.

Cross-examination:

In North Carolina I have had occasion to work in and observe a warehouse operating about the same size as the warehouses I have seen operating in Georgia; in lots bigger and lots smaller warehouses. Some of them used to be smaller than these. I believe it takes a right smart more men for common labor in North Carolina than in the warehouses in Georgia, because it is a lot more to do to it and [fol. 780] it requires more hands to put it out. I have been floor manager putting out the sales and operating in it for years. I have never actually been the head of a warehouse. I don't know whether they come into the warehouses in a greater rush than they do in North Carolina; they are badly rushed all through the season. The Georgia season lasts only three or four weeks, and the North Carolina season lasts three or four months and more. I don't know that with a three weeks sale in Georgia, the tobacco in motor trucks comes to the tobacco warehouse in Georgia for 24 hours per day and in North Carolina it does not come to the warehouse anything like that on the average. I can't hardly say about that. They are scrooged and rushed, no

matter what sort of a house you have. When the rush is on, they are crowded during that time. If it takes two men to unload a truck in North Carolina and takes eight or ten men to unload a truck in Georgia, it would take more men in Georgia than in North Carolina, but they unload a load here in ten minutes and there it would take a half hour or more. If they have twenty-four hours to unload and place it on the floor in Georgia, you would have a sale more frequently in Georgia than in North Carolina. I don't know whether it would take more men to unload the same number of pounds in Georgia than in North Carolina. For one thing you cannot bring but so much in on a truck, but it is quicker gotten off than it is here. Ten men might do it in a minute here and up there it would take them an hour. They can take off two hundred pounds at a time here, and there ten pounds at a time. That makes the difference. I have worked at other warehouses in Georgia except on the Douglas market; I have worked at Fitzgerald and some at Blackshear. I worked for Mr. Dickey at Fitzgerald.

Redirect examination:

I worked for Mr. Morgan in Blackshear. Mr. E. L. [fol. 781] Morgan, the old man that died.

T. H. Brown, sworn in behalf of defendants, testified as follows:

Direct examination:

I live in Coffee County; have lived there forty years. I started growing tobacco here in 1924. I have two of my warehouse bills for that year. That bill headed Growers Warehouse, George & McLean, Proprietors, Douglas, Georgia, 8-8-1924, sale made for Joseph Rhymes on which I put my initials, Bill No. 1, T.H.B., was for my tobacco and his together. We farmed on shares. Sometimes we landlords sell our crop in the name of tenants for the purpose of keeping his accounts. I just happened to that time because it was inconvenient for me to come one day, and I had him do it. That was tobacco grown on my place and I would not have had the bill if it hadn't been for that. The first pile of tobacco listed on that bill weighed 140

pounds. The weight in pounds is in the second column, it sold for 45 cents, and the total on that pile was $63.00. The next pile was 148 pounds at 49¢, $72.50. The gross sale there was $135.52. The warehouse charges on that bill is 29 cents. The total pounds of that sale was 288 pounds. To figure what ten cents per one hundred pounds on that 288 pounds would amount to, you just multiply that by ten, and it would be $28.81. That would be approximately 29 cents, nearer 29 than 28 cents. The next item on the bill is auction fees 30 cents. That is probably 50¢ in that item instead of 30¢/Auction fees 50¢, two piles; that would be 25¢ per pile. The weight of those piles is 140 pounds and 148 pounds. This "C-25 per cent, $32.83" which is deducted didn't have anything to do with the warehouse charges. That was the first year I grew it. I had a demonstrator and he furnished fertilizer and got 25% of the crop. That second bill headed The Big Tobacco Warehouse, Peagrem & Hester, Proprietors, Aug. 13, 1934, J. [fol. 782] Rhymes, on which I have written in my handwriting T.H.B., was my tobacco. The pounds on that bill are 62, 114, 82, 120, 136, total 514 pounds. There are two piles on that bill weighing less than 100 pounds. That first item of charges is warehouse charges, 56¢. By writing the first pile of 62 pounds down as 100 pounds and counting all piles of less than 100 pounds as if they were full hundred pounds the total would be 570 pounds. Figuring that at 10 cents a hundred, that would be 57 cents. Fifty-seven is approximately 56 cents. They did not gouge you as much as they do now. The next item is auction fees, $1.05. Two piles weigh less than 100 pounds, and figuring that at 15 cents, it would be 30 cents. There were three piles over 100 pounds, and figuring them at 25 cents it would be 75 cents. The total is $1.15; $1.05 is right. There is nothing at all on these warehouse bills to show the farmers how the warehouse charges are figured and how the auction fees are figured. Most of the farmers, and I always did, just take what they give me. I never did know how to figure charges before this examination this morning. I always took just what I got. But of course they say here 2½% commission. I have figured that to see if that was right, but these other figures I never knew how to get it. I have heard sometimes 25¢ a pile and sometimes maybe 50. I have never received a bill for tobacco sold from any tobacco

warehouse which showed me how these warehouse charges and auction fees were calculated. There was nothing definite there to show me. They figured them out just as they pleased, and handed them to the farmers; and the farmer, he usually takes it and goes on. There was a party that looked like last year was not satisfied with his charges, and he checked it all over and found several mistakes and went back on them. This bill here is a bill of Wells & Brown, grown in 1931, 965 pounds, no it is 76 pounds, and brought 76 cents. The piles on there are 76 pounds, 52 pounds, 130 [fol. 783] pounds and 50 pounds. The gross sales was $4.78. The warehouse charges listed on this bill is $1.08. You will notice that has been marked over. I made a protest and thought I was going to have to go home and get a chicken to put up the warehouse expense, and they marked off a little of the warehouse charge on that bill. They marked out $1.35 and put it $1.08. There are four piles on that bill. Three of them weighed less than 100 pounds and one weighed over 100 pounds; it weighed 130 pounds. Counting the piles that are less than 100 pounds as a full hundred, that would make a total of 430 pounds. Figuring that at 25¢ a hundred, the result is $1.07. That is approximately $1.08. There is a fraction of 50 left on the $1.07 and they would take the benefit of that. That pile of 104 pounds on there was struck off because they passed it and would not give any bid at all. Figuring four piles at 25¢ a pile it would be $1.00. The total charges on that bill are $2.20. The commission was 12¢ and the other charges $2.08, making a total of $2.20. All of the tobacco sold for $4.78 gross. The net amount received was $2.15. I paid a little over half of it for the warehouse charges; no, lacked a fraction of being one-half, but they marked it off. I just begged them to do that because they were getting more than I was, and that's the way that bill shows. I thought they gave *gave* me something. That tobacco was sold August 21, 1931. The bills I have right here are for my crop that year. This is all me and Wells grew, and he was the only one that had tobacco on the place. That's all of it, but we sent that and tried three sales and didn't make expenses enough to put it in, and I quit. I think high weighing and handling charges and a high auction fee in a year when tobacco sells low is very unfair. That is one reason why I brought these bills here. When tobacco don't

bring anything, I don't think the warehouse ought to charge so much. That's my idea about it. We all ought to kind of lose together. Those two charges just about ate up the whole [fol. 784] thing in a year when tobacco was low. The commission is negligible in those low years.

Cross-examination:

These bills produced by me are from warehouses on the Douglas market; I never sold any anywhere else.

Redirect examination:

I have some other bills here, for some other years. They cover sales of some of my tobacco. As a grower I am not satisfied with the scale of charges that the warehousemen have been charging for the last seven years. All of the growers I have talked to are complaining about them being too high.

Counsel for Defendants tendered in evidence the bills identified by the witness, T. H. Brown, for one sale at the Soaper Warehouse and others for the Growers Warehouse, who are plaintiffs in this case, and the third bill covering a sale at The Big Warehouse, Peagrem & Hester, proprietors, operating in Douglas in the year 1924, which were admitted and marked Defendants' Exhibit No. 8.

[fol. 785] STIPULATIONS AS TO CERTAIN FACTS AND EVIDENCE

Stipulation: It was stipulated and agreed between counsel of record for all parties that the following facts should be regarded as evidence in the case:

For the State of North Carolina, the annual production of bright le-f flue-cured tobacco and the average price for the years named was as follows:

Year	Production in pounds	Average price in cents per pound
1919-20	313,119,374	49.15
1920-21	414,785,223	20.67
1921-22	240,982,776	24.48
1922-23	200,943,147	27.41
1923-24	311,085,426	20.83
1924-25	231,877,358	23.30
1925-26	341,807,523	22.55
1926-27	371,578,758	25.54
1927-28	472,408,338	21.99
1928-29	484,112,867	18.86
1929-30	481,556,650	18.40
1930-31	560,367,571	12.87
1931-32	464,311,737	8.86
1932-33	281,174,770	11.98
1933-34	512,641,598	15.93
1934-35	392,928,118	27.30

And that the annual production and average price for the State of South Carolina for the years 1921 through 1934, both inclusive, is as follows:

[fol. 786]

Year	Production in pounds	Average price in cents per pound
1921	43,533,586	11.21
1922	42,586,756	20.53
1923	77,791,783	20.94
1924	45,521,604	16.24
1925	70,863,812	16.52
1926	56,775,614	23.62
1927	76,579,367	20.20
1928	82,148,173	12.76
1929	82,333,055	15.46
1930	*77,017,302	12.03
1931	*65,185,796	9.14
1932	36,251,281	11.41
1933	81,676,897	12.59
1934	52,952,175	21.60

1930—Report of S. C. Tobacco Growers' Marketing Association 16,866,240.

1931—Report of S. C. Tobacco Growers' Marketing Association 1,382,332.

*This amount does not include the amount received by the S. C. Tobacco Marketing Association.

Stipulation: It is stipulated and agreed between counsel of record for all parties that the statutes of North Carolina, South Carolina and Georgia shall be considered a part of the evidence in this case, showing the maximum tobacco warehouse charges in each State.

Stipulation: It was further agreed by counsel of record for all parties that the following report of the Clerk of the United States District Court for the Middle District of Georgia to Hon. Bascom S. Deaver, Judge of said court, should be regarded as evidence in this case; copied with elimination of caption and style of case:

[fol. 787] "Honorable Bascom S. Deaver, United States Judge, Macon, Georgia.

DEAR SIR:

"I beg to advise that I have on deposit in the Registry of the court the following amounts in the above-stated case:

Warehouse	Amount Deposited
1. Gold Leaf Warehouse, Hahira	$1,569.72
2. Banner Warehouse, Tifton	3,558.31
3. The Big Z Warehouse, Blackshear	3,841.61
4. Farmers Tobacco Warehouse, Waycross	1,862.77
5. Central Warehouse No. 1, Moultrie	3,027.77
6. Central Warehouse No. 2, Moultrie	1,427.64
7. Blake's Tobacco Warehouse, Moultrie	1,577.94
8. Farmers Independent Warehouse, Hahira	1,225.44
9. Soaper Warehouse, Douglas	2,825.37
10. Nat Smith's Warehouse, Valdosta	2,834.18
11. Cook County Warehouse, Adel	2,089.24
12. Planters Warehouse, Nashville	3,261.09
13. Independent Warehouse, Nashville	4,054.17
14. Metter Warehouse, Metter	1,257.78
15. Easley Warehouse, Baxley	2,006.48
16. Planters Warehouse, Baxley	1,106.35
17. O. K. Tobacco Warehouse, Douglas	2,969.85
18. Vidalia Tobacco Warehouse, Vidalia	4,729.01
19. Vann's Tobacco Warehouse, Vidalia	4,216.65
20. Clark Warehouse, Baxley	1,966.63
21. B. B. Saunders' Warehouse, Valdosta	4,830.12
22. Sheppard's Warehouse, Statesboro	3,130.59
23. Leath's Warehouse, Adel	1,994.90
24. Brantley Warehouse, Blackshear	2,567.83
25. Alliance Warehouse, Valdosta	1,759.08

[fols. 788-800]

Warehouse	Amount Deposited
26. Savannah Avenue Warehouse, Valdosta	$3,202.28
27. Hahira Warehouse, Hahira	1,359.65
28. Growers Warehouse, Metter	1,362.95
29. Farmers Brick Warehouse, Douglas	1,838.20
30. Farmers Warehouse, Blackshear	2,892.14
31. Twin-Brick Warehouse, Tifton	4,271.68
32. Fenners Warehouse, Tifton	4,298.98
33. Waycross Tobacco Warehouse, Waycross	2,111.54
34. Shepard-Smith Warehouse, Moultrie	2,574.57
35. Farmers Warehouse, Moultrie	3,324.52
36. The Growers Warehouse, Douglas	2,205.81
37. Union Warehouse, Nashville	3,966.25
38. The Red Warehouse, Douglas	1,896.28
39. Farmers Warehouse, Tifton	4,040.29
40. Cobb & Foxhall Warehouse, Statesboro	1,445.77
41. Farmers Warehouse, Hazlehurst	1,999.35
42. Planters Warehouse, Hazlehurst	1,798.94
43. Pelham Warehouse, Pelham	848.91
44. Peoples Warehouse, Moultrie	2,649.32
45. Big Dixie Warehouse, Pelham	2,145.95
Total	115,920.90

Respectfully submitted, (Signed) Geo. F. White, Clerk.

Both sides close.

[fol. 801] COMPLAINANTS' EXHIBIT NO. 1

Statement Operations B. B. Saunders, Valdosta, Ga., For Seasons 1930, 1931, 1932, 1933, 1934, 1935

[fol. 802] Information Requested in Letter Alston & Alston August 29th, 1935

Questions:

A. Business Conducted by B. B. Saunders, Personally.

1. Location—Valdosta, Georgia.

2. Building owned by me, having been purchased eight years ago for $33,000.00, payable twenty year term, which

will average approximately $2700.00 per year, principal and interest. Interest on investment, Insurance, repairs, State & County Taxes is an additional consideration of above purchase price. Considering depreciation on building, depreciation in property valuation would estimate property at present at about $20,000.00, meaning a depreciation over period of eight years of about $13,000.00.

3. Amount of capital required to operate house size of mine has been on an average of $60,000.00 per season. This money has to be deposited in bank before sale can open. The farmers are paid for their tobacco few minutes after sale is made. I have to bill the Companies for their purchases and carry amount of their purchases from three to five days before I receive return of money I paid to farmers for his tobacco. Where sales are large and rushed as in Georgia I often have to increase this operating capital by $20,000.00 until I can get returns from Companies to replace the money I have paid for farmers tobacco.

I use about 5000 baskets in my house and about 70 roller trucks, also have to furnish 2 sets of scales. This equipment at present market value would cost around $4500.00, and the life of this equipment is about ten to twelve years, meaning that every 12 years this additional equipment (other than warehouse) would have to be replaced.

4. I refer you to statistics of Agricultural Department of State of Georgia. This information has to be furnished them annually under State Law and they have on file actual figures of each warehouse in Georgia as well as other States, showing poundage of each warehouse, poundage of each market, poundage of State as well as amount of money paid by each and annual average price.

B. I refer you to itemized statement attached. My commission account shows all gross income, as I have no revenue from concession stands, rentals of any part of my building, or any other profits from warehouse operations. Concession stand is given free to operators for convenience of my customers. Leaf account shows for itself. All sweepings and scrap is run through this account and whatever profit or loss is shown in this account include these two items.

C. I refer you to itemized statement attached.

1. I refer you to itemized statement attached.

2. I refer you to itemized statement attached.

D. I refer you to itemized statement attached.

[fol. 803] Summary of B. B. Saunders, Valdosta, Ga., During the Years of 1930, 1931, 1932, 1933, 1934, as per Statements Attached Showing Itemized Accounts of Gen. Expenses

	Gross Earnings	Expenses	Profits	Loss
Year 1930	$34,454.12	$24,952.98	$9,501.14	.....
Year 1931	17,134.45	18,379.80	.....	$ 1,245.35
Year 1932	6,224.33	8,719.87	.....	2,495.54
Year 1933	19,698.48	11,757.74	7,940.74	.....
Year 1934	18,563.44	14,672.24	3,891.29	.....
	$96,074.82	$78,482.63	$21,333.08	$3,740.89

Gross earnings for five years		96,074.82
Total expense for operating for five years	78,482.63	
Plus Loss in two years operation	3,740.89	
		82,223.52
Net profits for five years operations on basis of charges as used		13,851.30
Had we used charges as passed by recent Legislation profits would have been 25% of 96,074.82, Less		24,018.70
Which would have shown a loss of		10,167.40
Less profits for 1935 operation as per statements attached, using this years charges		4,022.61
Estimated loss on six years operation		$6,144.79

[fol. 804] Profit and Loss Statement, B. B. Saunders, Valdosta, Ga.

Season 1935

Gross earnings by commissions and all Revenue		$24,006.92
Expenses		
Advertising Account	$227.90	
Expense Account (Itemized)	5,103.11	
Interest & Exchange (On Bank Deposit)	1,605.15	
Interest annual payment on warehouse	1,072.50	
Labor Account	2,416.75	
Over & Short Account (Lost Tobacco)	158.52	
Sales Account (Difference error in check)	53.61	
Salary Account (Itemized)	5,846.77	
		16,484.31
Profits from operations only		$7,522.61
Amount charged off as rent on building		3,500.00
Net Profits		$4,022.61

[fol. 805] Salary Account Itemized

August 24th, 1935

J. A. Campbell	201.00
O. L. Carter	272.50
H. B. Glisson	529.27
E. R. Horn	500.00
Wm. Maurer	210.00
E. O. Moore	60.00
P. L. Pittman	175.00
Wm. Sewell	10.00
J. G. Slaughter	170.00
Sadie Sutton	235.00
W. F. Veasey	285.00
W. L. Morris	300.00
Paul Stokes	300.00
S. H. Stewart	300.00
J. J. Miley	157.50
Will Wisenbaker	140.00
W. P. Hodges	70.00
J. P. Webb	51.00
Paul Trulock	60.00
O. A. Ganas	145.00
Glenn Scaff	70.00
Jack Strayhorn	90.00
S. R. Lynds	175.00
W. J. Carter	254.00
C. O. Carter	60.00
L. S. Roberts	200.00
F. E. Boone	600.00
Frank Carter	40.00
Geo. Williams	18.00
Worth Prime	60.00
Mrs. H. B. Glisson	100.00
Jack Rogers (Ticket Marker)	6.00
H. A. Swindle (Ticket Marker)	5.00
	5,846.77

[fol. 806] Itemized Expense Account

Wimberly Transfer (hauling baskets from Asheville)	67.85
Lawrence Expense " " " "	159.48
Fred Lamar Expense " " " "	34.00

Itemized Expense Account—Continued

Charlotte Bag Co. (Sheets)	80.00
Charlotte Bag Co. "	60.00
B. B. Saunders (White Sulphur Springs)	100.00
Parramore Storage tobacco	30.00
Lawrence Expense (Baskets from Aberdeen)	71.71
Gobleib Bag Co. (Sheets)	80.00
Ga. Warehouse Tobacco Association	100.00
Gobleib Bag Co. (Sheets)	47.50
Cecil Manufacturing Co. (100 baskets)	539.00
L. W. Godwin (Bond for Warehouse Charges)	56.82
Garland Company (Roofing Paint)	135.20
A. J. Little (Lawyers Fee)	75.00
Friedlander (Sheets)	32.00
Ga. Warehouse Association Dep.	250.00
Geo. S. Simpson (Rent)	30.00
Nettlers (Sheets)	9.12
Friedlander (Sheets)	11.22
J. C. Lanier (2½% M. Code fees)	83.79
Ga. Power & Light Co.	30.61
Sou. Bell Tel. Co.	45.73
P. L. Pittman (Gas)	18.40
Repair to trucks and scales	20.00
Freight and Express	26.03
Insurance on Tob. storage and Ins. on Building	745.77
W. E. Rountree repair to door	6.80
Miscellaneous Expense	40.00
Office Supplies Warehouse stationery	297.04
Maurer & Gans (Gas)	16.88
Valdosta Drug (Repair Fire extinguishers)	16.15
Valdosta Tobacco Board of Trade	35.00
Repair to tires and Gas	704.64
G. M. A. C. Chevrolet	348.16
City of Valdosta (City License)	50.00
Ga. & Fla. Rent on Land	120.00
C. L. Jones Rent on Building	10.00
Ga. & Fla. Ry. Rent on floor space	75.00
Telegraph and phone	11.06
O. L. Carter (Gas)	32.73
W. J. Carter "	33.38
Supplies repair on building	80.26
Total 4816.33	2763.63

Itemized Expense Account—Continued

Ga. Power & Light Co.	79.18
Glisson Motor Co. (Auto Repair)	15.60
Southern Ice Co.	16.00
Valdosta Ins. Agency (Compensation Ins. Ga.)	47.00
Texas Company (Gas)	9.30
Stanfill Demming Tire Co.	51.18
Western Union Tel. Co.	6.90
Sou. Stationary & Printing Co.	2.55
Ga. Power & Light Co.	25.18
City of Valdosta (Water)	17.29
Valdosta Builders Supply Co.	1.00
Glisson Motor Co.	15.60
Total Expense 5103.11	286.78

[fol. 807] Summary of Operation, B. B. Saunders, 1934, Valdosta, Georgia

Revenue earned by commissions charged		$18,563.44
Expense		
Advertising account	$126.95	
Loss on Advance Account	44.50	
General Expense Account	3376.08	
Exchange, Interest and Discount	2439.58	
Labor Account	1116.25	
Salary Account	4068.88	
		11,172.24
Profits from operation		7,391.20
As I own my own house carrying charge on investment charged off as rent		3,500.00
Net Profit		$3,891.20

[fol. 808] Itemized Salary Account*, 1934, Valdosta, Ga.

B. B. Saunders (Personal Expense)	$297.00
H. B. Glisson (Bookkeeper)	727.57
O. L. Carter (Country Solicitor)	200.00
Jack Rogers (Auctioneer)	430.00
Wm. Maurer (Weigher)	133.00
W. F. Veasey (Floor Man)	150.00
W. L. Morris (Book Calculator)	190.00
P. L. Stokes (Book Calculator)	150.00
S. L. Sutton (Office Clerk)	165.00
J. P. Slaughter (Ticket Marker)	105.00
E. R. Horn (Weigher)	175.00
Will Wisenbaker (Country Solicitor)	110.00
E. B. Maynard (Auctioneer)	200.00
J. H. Castleberry (Floor Man)	137.56
Will Carter (Floor Man)	200.00
Frank Carter (Office Boy)	48.00
E. O. Moore (Floor Man)	125.00
S. R. Lynd (Floor Man)	190.00
L. B. Brantley (Night Man)	50.00
O. A. Gainus (Floor Man)	70.00
Al Acree (Country Solicitor)	100.00
R. L. Patten (Country Solicitor)	115.00
	$4,068.88

[fol. 809] Itemized Expense Account, Valdosta, Ga., 1934

Traveling Expense, Gas, oil and repairs	$690.72
Repair on Building	397.47
Water, lights and telephone	219.18
Office supplies and fixtures	491.18
Insurance on building and tobacco in storage And State and County Taxes	1,577.53
	$3,376.53

[fol. 810] Summary of Operation, B. B. Saunders, Valdosta, Ga., 1933

Revenue earned by commissions charged		$19,698.48
Expense		
Advance Account Loss	$41.90	
Advertising Account	120.32	
General Expense Account	1,619.64	
Exchange and Discount	560.32	
Interest on warehouse notes	1,360.00	
Loss on Leaf Account	43.78	
Labor Account	897.65	
Salary Account	3,118.35	
B. B. Saunders Personal Account	495.78	8,257.74
Profits from operation		$11,440.74
As I own my own house carrying charge on investment charged off as rent		3,500.00
Net profit		$7,940.74

[fol. 811] Itemized Salary Account, Valdosta, Ga., 1933

H. B. Glisson (Bookkeeper)	$418.35
Leslie Alphin (Auctioneer)	750.00
C. T. Reaves (Book Calculator)	400.00
D. T. Reaves (Ticket Marker)	150.00
R. R. Reaves (Weigher)	150.00
Wm. Maurer (Weigher)	100.00
E. C. Rountree (Weigher)	100.00
W. J. Carter (Country Solicitor)	100.00
Oscar Carter (Country Solicitor)	100.00
Will Wisenbaker (Country Solicitor)	100.00
J. C. Weeks (Book Calculator)	200.00
Red Mosley (Book Calculator)	200.00
S. L. Sutton (Office Clerk)	150.00
S. R. Lynd (Floor Man)	200.00
	$3,118.35

[fol. 812] Itemized Expense Account, Valdosta, Ga., 1933

Gasoline, oil and repairs	$216.72
City License and insurance and taxes	707.07
Office supplies and fixtures	380.00

Telephone, lights and water	213.85
Repair on Building	102.00
	$1,619.64

[fol. 813] Revised Summary of Operation, B. B. Saunders, 1933, Valdosta, Ga.

Through error original statement was made from a trial balance taken off one week prior to closing, which would effect the net profits as follows:

Additional commissions collected as per ledger		$2,760.02
Additional expenses charged in accounts for last weeks operation, as follows:		
Advance Account	41.00	
Expense Account	919.48	
Exchange and Discount	639.33	
Loss in Leaf Account	76.15	
Over & Short Account	183.23	
Labor Account	216.25	
Salary Account	2,244.85	3,320.65
Difference to be deducted from profit		$560.63

[fol. 814] Summary of Operation, B. B. Saunders, Valdosta, Ga., 1932

Revenue earned by commission charged		$6,224.33
Expenses		
Advertising Account	$236.70	
General Expense Account	924.63	
Loss on Freight Account	4.20	
Exchange and Discount	334.41	
Labor Account	281.40	
Loss on Leaf Account	267.93	
Tobacco Stolen	108.21	
Salary Account	1,682.39	
Interest on Warehouse notes	1,380.00	5,219.87
Profits from operation		1,004.46
As I own my own house carrying charge on investment charged off as rent		3,500.00
Net Loss		$2,495.54

State and County taxes and insurance on building was not paid in this years operation.

[fol. 815] Itemized Salary Account, Valdosta, Ga., 1932

H. B. Glisson (Bookkeeper)	$257.89
O. L. Carter (Country Solicitor)	100.00
W. J. Carter (Country Solicitor)	100.00
W. J. Langley (Auctioneer)	300.00
C. T. Reaves (Book Calculator)	200.00
Red Mosley (Book Calculator)	100.00
R. R. Reaves (Weigher)	100.00
D. T. Reaves (Ticket Marker)	150.00
J. C. Weeks (Book Calculator)	150.00
S. L. Sutton (Office Clerk)	100.00
Frank Carter (Office Boy)	25.00
S. R. Lynd (Floor Man)	100.00
	$1,682.89

[fol. 816] Itemized Expense Account, Valdosta, Ga., 1932

Gasoline, oil and repairs	$151.58
City License and Insurance	188.22
Office supplies and fixtures	418.16
Telephone, lights and water	122.69
Repair on Building	43.98
	$924.63

[fol. 817] Summary of Operation, B. B. Saunders, Valdosta, Georgia, 1931

Revenue earned by commissions charged		$17,134.45
Expense		
Advertising Account	$506.92	
Loss Bainbridge Tobacco Warehouse	630.71	
General Expense Account	1,103.18	
Loss in Frieght Account	20.65	
Exchange and Discount Account	660.98	
Interest on Borrowed Money	400.00	
Loss in Leaf Account	957.34	
Labor Account	948.87	
Salary Account	9,651.15	14,879.80
Profit from operation		2,254.65

As I own my own house carrying charge on investment charged off as rent	3,500.00
Net Loss	$1,245.35

In addition to above loss, insurance on building and State and County taxes amounting to approximately $1,000.00 was carried over by note into following years operation.

[fol. 818] Itemized Account of Expenses, Valdosta, Ga., 1931

Repairs to Auto, gas and oil	$246.51
Repairs on building	91.63
Water, Lights and Telephone	199.39
Office supplies and fixtures	415.65
City License, insurance on tobacco	150.00
	$1,103.18

Having a loss this season insurance on building and State and County taxes amounting to approximately $1,000.00 was carried over by note into following years operation.

[fol. 819] Itemized Salary Account, Valdosta, Ga., 1931

B. B. Saunders (Personal Expense)	$1,324.10
H. B. Glisson (Bookkeeper)	448.05
R. R. Reaves (Weigher)	400.00
J. P. Anderson (Auctioneer)	1,000.00
Lawrence Rogers (Floor Man)	110.00
D. T. Reaves (Ticket Marker)	500.00
E. C. Rountree (Weigher)	135.00
Mr. H. B. Glisson (Office Clerk)	100.00
J. J. Jones (Book Calculator)	600.00
C. T. Reaves (Book Calculator)	375.00
T. R. Butterworth (Clerk)	60.00
John Currey (Weigher)	150.00
J. C. Weeks (Book Calculator)	230.00
J. W. Thompson (Auctioneer)	896.30
G. S. Sharpe (Sales Assistant)	600.00
S. R. Lynd (Floor Man)	185.00
C. O. Lewis (Country Solicitor)	150.00
W. C. Bragg (Country Solicitor)	500.00
W. J. Carter (Night Floor Man)	250.00

Itemized Salary Account, Valdosta, Ga., 1931—Continued

G. W. Bailey (Country Solicitor)	200.00
S. H. Stewart (Country Solicitor)	330.00
O. L. Carter (Floor Man)	315.00
Will Wisenbaker (Country Solicitor)	200.00
Miss. Office help and Bill clerks	572.70
	$9,651.15

[fol. 820] Summary of Operation, B. B. Saunders, Valdosta, Georgia, 1930

Revenue earned by commissions charged		$34,454.12
Expense		
Advertising Account	$632.95	
General Expense Account	4,183.43	
Loss on Freight Account	138.25	
Interest Account—		
On Warehouse purchase notes	1,485.00	
Exchange and Discount	773.86	
Interest on money warehouse operation	605.25	
Loss in Leaf Account	568.94	
Lost Tobacco (stolen)	515.00	
Labor Account	2,495.30	
Salary Account	10,054.70	21,452.98
Profits from operation		$13,001.14
As I own my own house carrying c-arge on investment charged off as rent		3,500.00
Net Profit		$9,501.14

[fol. 821] Itemized Account of Expenses, B. B. Saunders, Valdosta, Ga., 1930

Traveling Expense, gas, oil and repairs	$598.91
Repairs on Building	255.84
Water, Lights, telephone and Sundries	487.77
Office Supplies and fixtures, stationary	1,590.73
Insurance on Building, tobacco storage, State and County Taxes	1,250.28
	$4,183.53

[fol. 822] Itemized Salary Account, B. B. Saunders, Valdosta, Ga., 1930

B. H. Byerley (Auctioneer)	$700.00
W. F. Veasey	120.00
J. M. Hurdle (Country Solicitor sale asst.)	800.00
H. B. Glisson (Bookkeeper)	350.00
C. O. Lewis (Country Solicitor)	200.00
C. T. Reaves (Book Calculator)	400.00
Mrs. H. B. Glisson (Office Clerk)	200.00
O. L. Carter (Country Solicitor)	275.00
J. J. Jones (Book Calculator)	750.00
D. T. Reaves (Ticket Marker)	644.20
R. R. Reaves (Weigher)	450.00
T. R. Butterworth (Book Calculator)	500.00
T. J. Boyd (Country Solicitor)	92.00
L. B. Williams (Country Solicitor)	225.00
J. T. Anderson (Auctioneer)	1,000.00
W. J. Carter (Floor Man)	250.00
D. D. Thompson (Floor Man)	60.00
S. R. Lynd (Floor Man)	125.00
E. O. Moore (Floor Man)	135.00
F. S. Sharpe (Sales Assistant)	1,000.00
Will Wisenbaker (Country Solicitor)	200.00
Richard Haynesworth (Floor Man)	125.00
Frank Carter (Office Boy)	36.00
G. W. Bailey (Country Solicitor)	400.00
J. W. McCall (Country Solicitor)	300.00
Wm. Maurer Jr. (Weigher)	117.50
R. L. Patten (Country Solicitor)	350.00
W. T. Roberts (Floor Man)	250.00
	10,054.70

[fol. 823] COMPLAINANTS' EXHIBIT No. 2

Twin Brick Warehouses, Tifton, Georgia

Operating Statements for the Years 1930 to 1935, Inclusive

[fol. 824] Harvey H. Hunt & Co.
Certified Public Accountants
Atlanta, Ga.

October 23, 1935.

Tifton Investment Company, Tifton, Georgia.

GENTLEMEN:

Pursuant to engagement, we have made an audit of the books and records of the Twin Brick Warehouses, Tifton,

Georgia, for the years 1930 to 1935, Inclusive, and submit, herewith, our report in the form of six Exhibits as follows:

Exhibits

"A"—Statement of Income, Profit and Loss--Year 1935.
"B"—Statement of Income, Profit and Loss—Year 1934.
"C"—Statement of Income, Profit and Loss—Year 1933.
"D"—Statement of Income, Profit and Loss—Year 1932.
"E"—Statement of Income, Profit and Loss—Year 1931.
"F"—Statement of Income, Profit and Loss—Year 1930.

The Twin Brick Warehouses have been in operation since the year 1928, and are owned and operated by the Tifton Investment Company, a Georgia Corporation of Tifton, Georgia.

The Corporation owns the buildings, Land and Equipment which are used in the operation of said Warehouses. They are as follows:

Land	$10,401.12
Warehouse Buildings	62,760.72
Equipment	6,616.22
Furniture and Fixtures	784.46
Total	$80,562.52

In addition to the above investment, there is a working Capital required for the operation of the Warehouses of approximately $50,000.00.

We give you below the amount of gross business done, together with the gross income, total expenses and net profits for the six years 1930 to 1935, inclusive:

Year	Gross Business	Gross Income	Total expenses	Net profits
1930	$405,725.51	$28,809.09	$19,768.83	$9,040.26
1931	216,113.44	19,382.86	17,305.49	2,077.37
1932	93,959.77	7,205.50	8,846.79	1,641.29 (Loss)
1933	388,654.99	25,688.39	16,808.82	8,879.57
1934	413,961.33	21,706.08	16,801.09	4,904.99
1935	566,254.51	26,033.62	18,861.34	7,172.28

[fol. 825] Twin Brick Warehouse, Tifton, Georgia

Comment

Due to the fact that there were no records kept of the actual pounds of tobacco sold each year, we are unable to

give you these figures. If these are desired, we are of the opinion that they can be obtained from the State of Georgia for each year.

In Exhibits "A" to "F", we give you detail operating statements for the years 1930 to 1935, inclusive, and as these statements set forth both the Income and Expenses in detail, they are self explanatory and need no further comment.

For your information, we have charged to operations for each of the years, the actual depreciation sustained on Buildings, Equipment, Furniture and Fixtures at the following rates:

Buildings	2% per annum
Equipment	10% per annum
Furniture and Fixtures	10% per annum

We wish to bring to your attention, the fact that the attached statements only include the actual operating Income and Expenses incurred for the period the warehouses were open for the sale of Tobacco, and do not include any administrative expenses whatsoever of the Corporation.

You will note in the operating statements, there is an item designated as Long and Short Account in the Expenses. Upon investigation, we find that this item is made up of losses incurred from differences in weights deducted by buyers and Tobacco that the Warehouse is unable to account for.

In Exhibit "A", we have listed in detail all the salaries paid amounting to over $100.00 and any salaries or wages paid under $100.00 are included in the item of labor.

As the income from floor sweepings were handled thru your leaf account, it was impossible to determine the income from this source.

We hereby certify that we have made an audit of the books and records of the Twin Brick Warehouses for the years 1930 to 1935, inclusive, and that, in our opinion, the attached statements correctly reflect the operations for the various years, and are in accordance with the books and records.

Respectfully submitted, Harvey H. Hunt and Company, by Harvey H. Hunt, Certified Public Accountant.

[fol. 826] Twin Brick Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1935

Leaf Account:	Income		
Sales		$22,957.89	
Cost of Sales		25,098.86	
Gross Loss			$2,140.97
Commission on Sales			27,903.42
Rental of Baskets			271.17
Total Gross Income			$26,033.62
Salaries:	Expenses		
H. W. Winstead	$3,000.00		
T. M. Hughes	467.00		
W. Winstead	300.00		
M. Anderson	250.00		
John Goff	240.00		
R. L. Harris	220.00		
R. W. Goodman	300.00		
T. B. Hilliard	300.00		
J. Carson	220.00		
Guy A. Jones	200.00		
J. E. Winstead	840.00		
J. B. Rollins	190.00		
M. B. Motley	800.00		
E. S. Short	150.00		
J. O. Sutton	125.00		
Mark Griffin	200.00		
T. E. Phillips, Jr.	150.00		
Jim Clark	140.00		
W. P. Fuller	100.00		
Dan Paulk	125.00		
V. C. Cavender	100.00		
O. H. Gray	100.00		
M. T. Sheppard	100.00		
Guy S. Jones	100.00		
H. C. Dorminey		$8,817.00	
		2,448.57	
Totals Carried Forward		$11,265.57	$26,033.62
[fol. 827] Totals Brought Forward		$11,265.57	$26,033.62
Expenses—Continued:			
Depreciation Sustained		1,995.26	
Taxes—Domestic		1,012.18	
Long and Short		1,132.06	
Insurance		510.97	
Stationery and Office Supplies		300.50	
Advertising		304.05	
Postage		168.09	
Drayage		79.60	
Code Authorities		75.76	
Sheets and Supplies		87.90	
Ice		35.00	
Legal		125.00	
Miscellaneous		93.29	
Total Expenses			17,185.23
Operating Profit			$8,848.39
Other Income Charges:			
Interest Paid			1,676.11
Net Profit—Year 1935			$7,172.28

Exhibit "A".

[fol. 828]

Twin Brick Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1934

Income:			
Leaf Account—Sales	$20,437.25		
Purchases	21,052.58		
Gross Loss on Sales		$615.33	
Commissions on Sales		22,137.08	
Rental of Baskets		184.33	
Gross Income			$21,706.08
Expenses:			
Salaries:			
H. W. Winstead	3,122.46		
J. E. Winstead	1,000.00		
J. J. Bibbons	662.75		
Tom Hughes	372.55		
R. W. Goodman	300.00		
Whorton Winstead	300.00		
Bill Perkins	298.87		
James Carson	220.00		
R. L. Harris	210.00		
Deming Whitney	210.00		
Troy Anderson	210.00		
J. M. Goff	205.00		
Guy Jones	200.00		
R. W. Patrick	150.00		
T. E. Phillips, Jr.	150.00		
Mork Griffin	130.00		
C. G. Short	120.00		
J. N. Warren	106.50		
R. N. McLendon	105.00		
H. C. Dorming	100.00		
Orman Gay	100.00		
Labor		$8,273.13	
Advertising		2,237.84	
Postage		737.65	
Traveling		191.25	
Code Authority		65.00	
Dues and Subscriptions		58.06	
Freight and Drayage		41.00	
Ice		29.38	
Repairs		26.00	
Insurance		26.62	
Tax on Checks		494.87	
Depreciation		3.92	
Taxes		1,993.03	
		1,028.85	
Total Expenses			15,204.60
Operating Profit			6,501.48
Other Income Charges:			
Interest and Exchange	$1,169.69		
Over and Short Account	426.80		
			1,596.49
			$4,904.99

Exhibit "B".

[fol. 829]

Twin Brick Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1933

Income:			
Leaf Account—Sales	$15,646.51		
Purchases	15,809.26		
Gross Loss		$162.75	
Commission on Sales		25,698.67	
Rental of Baskets		152.47	
Total Gross Profit			$25,688.39
Expenses:			
Salaries:			
H. W. Winstead	$3,500.00		
J. J. Gibbons	1,043.51		
J. E. Winstead	655.79		
T. M. Hughes	421.75		
J. I. Warrent	323.92		
Troy Anderson	270.00		
R. L. Harris	225.00		
James Cason	220.00		
R. W. Goodman	175.00		
T. E. Phillips	175.00		
J. M. Goff	162.50		
T. F. Little	152.50		
Dan Palmar	146.50		
Tillman Paulk	145.00		
T. A. Mitchell	125.00		
R. M. Lankford	140.00		
J. O. Sutton	115.00		
R. P. Swindle	111.00		
J. E. Puckett	100.00		
Bob Bowen	100.00		
Lucius Tucker	100.00		
B. E. Godwin	100.00		
		$8,507.47	
Labor		2,491.69	
Insurance		518.63	
Stationery and Office		227.00	
Advertising		534.97	
Traveling		12.00	
Drayage		174.00	
Postage		88.20	
Scale Service		15.00	
Repairs		33.00	
Tax on Checks		4.14	
Depreciation		1,989.78	
Taxes		1,018.75	
Total Expenses			15,614.03
Operating Profit			$10,074.36
Other Income Charges:			
Interest Paid		154.00	
Exchange Paid		839.68	
Long and Short Account—Net Short		201.11	
			1,194.79
Total Other Income Charges			1,194.79
Net Profit for Period			$8,879.57

Exhibit "C".

[fol. 830]

Twin Brick Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1932

Income:			
Leaf Account:			
Sales	$5,222.29		
Purchases	2,901.05		
Gross Profit		$321.24	
Commission on Sales		6,799.98	
Rental on Baskets		84.28	
Total Gross Profit			7,205.50
Expense:			
Salaries:			
H. W. Winstead	1,107.45		
M. B. Motley	775.00		
J. I. Warren	375.00		
C. C. Winstead	200.00		
J. E. Winstead	250.00		
		2,707.45	
Labor		1,378.07	
Insurance		553.01	
Stationery and Printing		117.46	
Advertising		108.30	
Taxes Paid		1,389.68	
Miscellaneous		61.55	
Ice		16.00	
Telephone and Telegraph		1.07	
Depreciation		2,034.93	
Total Expenses			8,367.52
Profit from Operations		(Loss)	1,162.02
Other Income Charges:			
Net Shortage, Tobacco etc		214.97	
Exchange Paid		196.74	
Interest Paid		67.56	
Total Other Income Charges			479.27
Net Profit for Period		(Loss)	1,641.29

Exhibit "D".

[fol. 831]

Twin Brick Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1931

Income:			
Leaf Account:			
Sales	$7,534.10		
Purchases	8,331.08		
		$796.98	(Loss)
Commissions		19,828.70	
Basket Rentals		351.14	
Gross Income			$19,382.86

Twin Brick Warehouse, Tifton, Georgia—Statement of Income, Profit and Loss, Year 1961—Continued

Expense:

Salaries:			
H. Winstead	3,932.67		
J. L. Bowen	550.00		
C. C. Winstead	500.00		
T. M. Hughes	500.00		
J. I. Warren	500.00		
C. Parrish	120.00		
J. D. Harper	100.00		
T. E. Phillips, Jr.	240.00		
J. M. Carson	230.00		
R. L. Harris	283.00		
J. M. Goff	195.50		
Fred Sutton	162.50		
G. C. Willis	125.00		
B. F. Gary	266.75		
R. M. Langford	100.00		
L. H. Harper	100.00		
M. B. Mobley	1,000.00		
R. J. Hicks	110.00		
		$9,015.42	
Labor		2,377.30	
Advertising		297.15	
Drinks		44.95	
Ice		24.00	
Insurance		593.61	
Printing and Stationery		125.29	
Postage		191.81	
Repairs		23.50	
Subscriptions and Dues		95.56	
Tobacco Sheets		27.16	
Water and Lights		39.66	
Miscellaneous		168.46	
Depreciation		2,034.93	
Taxes		1,425.88	
Total Expense			$16,484.68
Profit from Operations			$2,898.18
Other Income Charges:			
Interest Paid	110.00		
Exchange Paid	519.00		
Long and Short (Short)	179.26		
Bad Debts:			
P. Culpepper	$5.00		
D. P. Rogers	10.00		
	15.00		
		823.26	
Other Income Credits:			
Dividends—National Bank of Tifton	2.26		
To Balance Ledger	.19		
		2.45	
			820.81
Net Profit for Period			$2,077.37

Exhibit "E".

[fol. 832]

Twin Brick Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1930

Revenue:			
Commission on Tobacco Sales		$27,458.82	
Leaf Account—Sales	$17,241.68		
Purchases	16,020.98		
Profit from Sales		1,220.70	
Basket Outlage		94.57	
Tobacco Sheets		35.00	
Total Revenue			$28,809.09
Expenses:			
Salaries:			
H. W. Winstead	4,479.74		
M. B. Motley	1,250.00		
J. L. Warren	600.00		
T. M. Hughes	600.00		
W. A. Goobee	150.00		
A. L. Ross	216.66		
James Carson	200.00		
E. B. Pruitt	350.00		
J. M. Goff	162.50		
T. E. Phillips, Jr.	200.00		
R. L. Harris	250.25		
F. Sutton	164.05		
B. F. Garry	360.75		
L. Harper	150.00		
E. J. Fullwood	125.00		
M. T. Sheppard	150.00		
		9,408.95	
Labor		2,425.15	
Advertising		424.00	
Stationery and Printing		121.90	
Postage		108.54	
Dues		73.50	
Drayage		51.96	
Drinks		54.50	
Repairs		4.30	
Miscellaneous		56.34	
Supplies		37.25	
Sheets		5.60	
Water and Lights		18.97	
Telephone and Telegraph		12.01	
Ice		30.00	
Government Grading		16.52	
Insurance		125.00	
Depreciation		1,912.31	
Taxes		1,351.56	
Total Expenses			16,238.36
Profit from Operations			12,570.73
Other Income Charges:			
Long and Short		2,418.46	
Interest		192.01	
Exchange		920.00	3,530.47
Net Profit			$ 9,040.26

Exhibit "F".

[fol. 833] COMPLAINANTS' EXHIBIT No. 3

Farmers Warehouse, Tifton, Georgia

Operating Statements for the Years 1930 to 1935, Inclusive

[fol. 834] Harvey H. Hunt & Co.,

Atlanta, Ga.

October 23, 1935.

Tifton Investment Company, Tifton, Georgia.

GENTLEMEN:

Pursuant to engagement, we have made an audit of the books and records of the Farmers Warehouse, Tifton, Georgia, for the years 1930 to 1935, inclusive, and submit, herewith, our report in the form of six Exhibits as follows:

Exhibits

"A"—Statement of Income, Profit and Loss—Year 1935.
"B"—Statement of Income, Profit and Loss—Year 1934.
"C"—Statement of Income, Profit and Loss—Year 1933.
"D"—Statement of Income, Profit and Loss—Year 1932.
"E"—Statement of Income, Profit and Loss—Year 1931.
"F"—Statement of Income, Profit and Loss—Year 1930.

The Farmers Warehouse has been in operation since the year 1928, and is owned and operated by the Tifton Investment Company, a Georgia Corporation of Tifton, Georgia.

The Corporation owns the Buildings, Land and Equipment which are used in the operation of said warehouses. They are as follows:

Land	$6,000.00
Warehouse Building	27,994.62
Equipment	2,000.00
Furniture and Fixtures	392.28
Total	$36,386.90

In addition to the above investment, there is a Working Capital required for the operation of the warehouses of approximate $50,000.00.

We give you below the amount of Gross Business done, together with the Gross Income, Total Expenses and Net Profits for the six years 1930 to 1935, inclusive:

Year	Gross Business	Gross Income	Total Expenses	Net Profits
1930	$304,635.91	$21,890.64	$15,743.98	$6,146.66
1931	143,754.49	14,677.46	13,457.37	1,220.09
1932	71,530.76	5,900.23	7,481.68	1,581.45 (Loss)
1933	415,129.70	27,104.58	17,462.93	9,641.65
1934	385,780.16	20,332.55	13,854.14	6,478.41
1935	516,157.82	23,364.77	17,049.17	6,315.60

[fol. 835] Farmers Warehouse, Tifton, Georgia

Comment

Due to the fact that there were no records kept of the actual pounds of tobacco sold each year, we are unable to give you these figures. If these are desired, we are of the opinion that they can be obtained from the State of Georgia, for each year.

In Exhibits "A" to "F", we give you detail operating statements for the years 1930 to 1935, inclusive, and as these statements set forth both the Income and Expenses in detail, they are self explanatory and need no further comment.

For your information, we have charged to operations for each of the years, the actual depreciation sustained on Building, Equipment, Furniture and Fixtures at the following rates:

Buildings	2% per annum.
Equipment	10% per annum.
Furniture and Fixtures	10% per annum.

We wish to bring to your attention the fact that the attached statements only include the actual operating Income and Expenses incurred for the period the Warehouse was open for the sale of Tobacco, and do not include any administrative expenses whatsoever of the Corporation.

You will note in the operating statements, there is an item designated as Long and Short Account in the Expenses. Upon investigation, we find that this item is made up of losses incurred from differences in weights deducted by buyers, and Tobacco that the Warehouse is unable to account for.

In Exhibit "A", we have listed in detail all the salaries paid amounting to over $100.00 and any salaries or wages paid under $100.00 are included in the item of labor.

As the income from floor sweepings were handled thru your leaf account, it was impossible to determine the income from this source.

We hereby certify that we have made an audit of the books and records of the Farmers Warehouse for the years 1930 to 1935, inclusive, and that, in our opinion, the attached statements correctly reflect the operations for the various years, and are in accordance with the books and records.

Respectfully submitted, Harvey H. Hunt and Company, by Harvey H. Hunt, Certified Public Accountant.

[fol. 836]

Farmers Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year, 1935

Income

Leaf Account:			
Sales		$18,182.41	
Cost of Sales		20,796.41	
Gross Loss			$ 2,614.00
Commission on Sales			25,750.92
Rental of Baskets			227.85
Total Gross Income			$23,364.77

Expenses

Salaries:			
A. W. Jeffries	$2,996.64		
W. T. Burton	1,095.21		
E. B. Pruitt	817.50		
W. H. Bobbett	445.06		
E. E. Young	420.06		
T. A. Mitchell	300.00		
J. Fletcher	240.00		
R. L. Dixon	227.50		
H. E. Dunn	275.00		
Joe Harrell	217.00		
B. Purvis	175.00		
R. T. Creedle	158.33		
M. W. Ashurst	157.50		
J. W. McMillan	157.50		
M. J. Rowe	140.00		
W. D. McPhaul	135.00		
Sam Lovett	150.00		
Waldo Paulk	112.50		
S. A. Luke	105.00		
Dan Wall	100.00		
C. C. Overstreet	100.00		
J. S. Hardy	100.00		
Rolf McMillan	100.00		
		$ 8,724.80	
Labor		2,798.57	
Totals Carried Forward		$11,523.37	$23,364.77

Exhibit "A".

[fol. 837]

Farmers Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year, 1935

Totals Brought Forward	$11,523.37	$23,364.77
Expenses-Continued:		
Depreciation Sustained	799.14	
Taxes—Domestic	516.32	
Long and Short	760.24	
Insurance	498.03	
Stationery and Office Supplies	21.85	
Advertising	599.35	
Postage	201.40	
Drayage	7.50	
Code Authority	70.36	
Sheets and Supplies	157.91	
Ice	72.75	
Light and Water	54.16	
Telephone and Telegraph	15.36	
Legal	125.00	
Miscellaneous	117.50	
Total Expenses		15,540.24
Operating Profit		$ 7,824.53
Other Income Charges:		
Interest and Exchange	$ 1,485.01	
Bad Debts	23.92	
Total Other Income Charges		1,508.93
Net Profit—Year 1935		$ 6,315.60

Exhibit "A".

[fol. 838]

Farmers Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1934

Income:			
Leaf Account:			
Sales	$12,378.06		
Purchases	12,331.60		
Gross Loss		$ 53.54	
Commission on Sales		20,212.32	
Rental of Baskets		173.77	
Total Gross Income			$20,332.55
Expenses:			
Salaries:			
A. W. Jefferies	$ 3,122.46		
W. T. Barton	825.90		
W. H. Bobbett	355.38		
E. B. Pruitt	900.00		
H. E. Dunn	200.00		
O. V. Baskaloo	50.00		
J. W. McMillan	80.00		
M. W. Ashurst	140.00		
S. A. Luke	160.00		
M. E. Griffin	200.00		
R. L. Dixon	200.00		
S. G. Lovett	150.00		
G. L. Webb	175.00		
Julian Fletcher	200.00		
Joe Harrell	200.00		
E. E. Nanny	357.40		
T. A. Mitchell	300.00		
		7,616.14	
Advertising		1,464.17	
Labor		1,785.99	
Postage		174.91	
Code Authority		75.35	
Repairs		65.04	
Ice		64.92	
Gas and Oil		47.88	
Light and Water		37.46	
Stationery and Printing		31.54	
Dues and Subscriptions		16.00	
Freight and Drayage		30.87	
Telephone and Telegraph		15.25	
Tax on Checks		4.74	
Depreciation		801.37	
Taxes		439.51	
Total Expenses			$12,671.14
Operating Profit			$ 7,661.41
Other Income Charges:			
Interest and Exchange		$ 1,048.21	
Over and Short Account		134.79	1,183.00
Net Profit for Period			$ 6,478.41

Exhibit "B".

[fol. 839] Farmers Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1933

Income:			
Leaf Account:			
Sales	$22,949.87		
Purchases	22,521.57		
Gross Profit		$ 428.30	
Commission on Sales		26,458.09	
Rental of Baskets		218.19	
Total Gross Profit			$27,104.58
Expenses:			
Salaries:			
A. W. Jeffreys	$ 3,500.00		
W. T. Burton	1,156.50		
W. H. Bobbitt	1,073.23		
E. B. Pruitt	300.00		
I. G. Ragsdale	375.00		
H. E. Dunn	255.00		
O. V. Barkeloo	345.00		
J. W. McMillan	175.00		
W. T. Roughton	125.00		
M. E. Griffin	180.00		
Julian Fletcher	180.00		
J. M. Harrell	175.00		
T. S. Thomas	175.00		
O. H. Gay	100.00		
J. L. Robinson	100.00		
Bob Bowen	100.00		
E. C. Henderson	100.00		
		8,414.73	
Labor		2,705.66	
Advertising		752.69	
Solicitors		2,047.60	
Insurance		426.01	
Stationery and Office Supplies		509.15	
Repairs		118.90	
Telephone and Telegraph		15.30	
Tax on Checks		8.56	
Postage		157.00	
Scale Service		35.00	
Rent		25.00	
Drayage		22.25	
Depreciation		800.09	
Taxes		436.60	
Total Expenses			16,474.54
Operating Profit			$10,630.04
Other Income Charges:			
Interest Paid	163.75		
Exchange Paid	870.55		
		$ 1,034.30	
Other Income Credits:			
Long and Short Account—Net Long		45.91	988.39
Net Profit for Period			$ 9,641.65

Exhibit "C".

[fol. 840]

Farmers Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1932

Income:			
Leaf Account:			
Sales	$ 5,753.73		
Purchases	4,916.66		
Gross Profit		$ 837.07	
Commission on Sales		5,005.86	
Rental on Baskets		57.30	
Total Gross Profit			$ 5,900.23
Expenses:			
Salaries:			
A. W. Jefferies	$ 1,107.45		
W. T. Burton	700.00		
W. H. Babbitt	375.00		
E. B. Pruitt	300.00		
H. C. Land	300.00		
I. G. Ragsdale	180.00		
H. E. Dunn	150.00		
		$ 3,112.45	
Labor		1,324.45	
Advertising and Solicitors		620.73	
Insurance		557.54	
Stationery and Printing		71.10	
Miscellaneous		31.98	
Repairs		27.35	
Telephone and Telegraph		15.74	
Ice, Water, Lights and Heat		32.56	
Tax on Checks		24.92	
Postage		8.00	
Depreciation		797.99	
Taxes		581.35	
Total Expenses			7,206.16
Net Operating Profit (Loss)			$ 1,305.93
Other Income Charges:			
Exchange		177.78	
Interest		42.66	
Shortage in Cash		55.08	275.52
Net Profit for Period (Loss)			$ 1,581.45

Exhibit "D".

[fol. 841] Farmers Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1931

Income:			
Leaf Account:			
Sales	$13,611.50		
Purchases	11,735.74		
		$ 1,875.76	
Commission on Sales		12,801.70	
Total Gross Income			$14,677.46
Expenses:			
Salaries:			
A. N. Jefferies	$ 2,996.97		
W. T. Burton	1,000.00		
H. C. Land	400.00		
W. H. C. Walker	400.00		
W. H. Babbitt	500.00		
O. V. Barkulro	300.00		
J. M. Walker	375.00		
W. T. Roughton	165.00		
Orman Clay	130.00		
H. H. Hutchinson	192.50		
H. E. Dunn	275.00		
J. L. Robinson	150.00		
Joe Harrell	200.00		
C. M. Wallis	150.00		
J. W. McMillan	200.00		
J. D. McLeod	125.00		
Zeke Griffin	200.00		
O. G. Ragsdale	325.00		
J. S. Thomas	200.00		
		$ 8,284.47	
Labor		1,882.35	
Advertising		405.55	
Drinks		10.75	
Ice		48.00	
Insurance—Fire		237.62	
Miscellaneous		101.16	
Postage		40.00	
Repairs—Building	5.20		
Furniture and Fixtures	25.00		
		30.20	
Supplies—Warehouse		12.05	
Stationery and Printing		177.05	
Subscriptions and Dues		88.32	
Telephone and Telegraph		14.10	
Tobacco Sticks		41.10	
Tobacco Sheets		44.32	
Water and Lights		71.25	
Depreciation		797.99	
Taxes		611.09	
Total Expenses			12,897.37
Profit from Operations			$ 1,780.09
Other Income Charges:			
Interest Paid		71.11	
Exchange Paid		355.00	
Long and Short (Short)		133.89	560.00
Net Profit			$ 1,220.09

Exhibit "E".

[fol. 842]

Farmers Warehouse, Tifton, Georgia

Statement of Income, Profit and Loss, Year 1930

Revenue:			
Commission on Tobacco Sales		$21,341.65	
Leaf Account:			
Sales	$20,869.16		
Purchases	20,397.63		
Profit from Sales		471.53	
Basket Outlage		77.46	
Total Revenue			$21,899.64
Expenses:			
Salaries:			
A. W. Jefferies	$ 3,851.53		
J. W. Hill	1,000.00		
W. H. Bobbitt	650.00		
H. C. Land	500.00		
J. E. Winilead	250.00		
H. E. Dunn	250.00		
O. V. Barkuloo	350.00		
John Hamilton	150.00		
W. A. Gater	150.00		
W. T. Roughton	150.00		
J. A. Walker	120.00		
J. M. Walker	375.00		
J. L. Robinson	175.00		
J. W. McMillan	300.00		
M. T. Griffin	200.00		
Joe Harrell	200.00		
H. H. Hutchinson	175.00		
Mercer Mitcham	100.00		
E. W. Howard	100.00		
Sam Paulk	100.00		
T. S. Thomas	200.00		
		$ 9,346.53	
Labor		2,300.91	
Advertising		690.50	
Drayage		51.50	
Drinks		35.55	
Dues		40.00	
Stationery and Printing		66.70	
Postage		3.00	
Repairs		97.48	
Telephone and Telegraph		30.54	
Insurance		177.20	
Water and Light		50.52	
Supplies		167.00	
Miscellaneous		51.10	
Sheets		81.56	
Government Grading		7.04	
Basket Sticks		26.00	
Ice		57.75	
Depreciation		791.56	
Taxes		579.24	
Total Expenses			14,651.88
Profit from Operations			$ 7,238.76

Farmers Warehouse, Tifton, Georgia—Statement of Income, Profit and Loss, Year 1930—Continued

Other Income Credits:			
Outstanding Checks written off		$ 78.80	
Other Income Charges:			
Interest	$ 173.15		
Exchange	707.50		
Long and Short	135.64		
J. T. Harris—Bad Debt	154.81	1,171.10	1,092.30
Net profit			$ 6,146.66

Exhibit "F".

[fol. 843]

COMPLAINANTS' EXHIBIT No. 9

[fol. 844]

Statement of Sheppard's Warehouse, Statesboro, Ga.

Season of 1935

Commissions			$18,114.05
Warehouse Rent		$ 1,879.77	
Bank Exchange and Interest		865.54	
Leaf A/c Lost Tobacco		3,844.91	
Skilled Labor:			
Buck James, Asst. Sales Mgr.	450.00		
O. G. Rucker, Auctioneer	427.00		
H. J. Cornwell, Bookman	315.00		
J. E. Carter, Floor Mgr.	312.00		
W. E. Taylor, Bookkeeper	300.00		
Aubry Brannan, Asst. Floor Mgr.	250.00		
Frank Laws, Pay-off man	250.00		
G. L. Wootton, Clip man	180.00		
Dan Taylor, Ticket man	125.00		
Morgan Waters, Drive Way Man	100.00		
Loyd Malpass, Check-off Man	100.00		
Jasper Johnson, Leaf Man	104.00		
T. C. Denmark, Weighman	87.50		
P. B. Robertson, "	72.00		
Fred Bland, Night Watch	74.00		
J. T. Pratt, 1 Wk. Bill Clk.	30.00		
Clyde Edenfield, Gen'l Floor Mgr. & Utility man	360.00		
		3,536.50	
Common Labor, Advertising, Office and General Expense		3,520.23	13,646.95
			4,467.10
Deposited with Clerk of Federal Court at Macon, Ga.			3,130.59
			$ 1,336.51

I certify that the above is a true statement of the 1935 business of Sheppard's Warehouse at Statesboro, Ga.

Signed:

12-20-35 R. E. Sheppard, Mgr.

[fol. 845] DEFENDANTS' EXHIBIT No. 1 (a)

[fol. 846] Bill No. 1. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., —— —, 192-.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
119[6]	56	15	8.40

Less:

Warehouse Charges	.25	
Auction Fees	.25	
Commission 2½ per cent	.21	.66
Net Proceeds		7.74

[fol. 847] Bill No. 2. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-24-1926.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
100	232	31	7192
	226	22[2]	50.85
	312	26	81.12
	220	30	66.00
	416	26	108.16
	1406		378.05

Less:

Warehouse Charges	1.41	
Auction Fees	2.50	
Commission, 2½ per cent	9.44	13.35
		364.70

[fol. 848] Bill No. 3. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-24-1926.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
86	162	12½	20.25
	286	20	57.20
	312	28	87.36
	136	12¼	16.66
	174	16½	28.71
	52	11½	5.98
	274	33	90.42
	80	26	20.80
	224	28	62.72
	282	15	42.30
	110	17½	19.25
	134	31	41.54
	2226		493.19

Less:

Warehouse Charges	2.26	
Auction Fees	4.05	
Commission 2½ per cent	12.38	18.69
Net Proceeds		474.50

[fol. 849] Bill No. 4. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-6-1926.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
237	110	12⅝	13.75
	110	16⅝	18.15
	110	27	29.70
	80	24	19.20

Bill No. 4. 1926 P. L. M.—Continued

Pounds	Price	Total
156	23	35.88
114	24[2]	27.93
140	27	37.80
122	28	34.16
140	23	32.20
174	26	45.24
144	23	33.12
1400		327.13

Less:		
Warehouse Charges	1.40	
Auction Fees	2.50	
Commission, 2½ per cent	8.15	12.07
		315.06

[fol. 850] Bill No. 5. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-20-26.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
29	268	31	83.88
	174	31	53.94
	170	31	52.70
	124	18	22.32
	260	29	75.40
	268	15	40.20
	200	25	50.00
	154	22	33.88
	230	16	36.80
	1848		448.32

Less:		
Warehouse Charges	1.85	
Auction Fees	3.25	
Commission, 2½ per cent	11.22	16.32
		432.00

[fol. 851] Bill No. 6. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-17-1926.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
1839	170	2.22	38.25
	224	21	60.48
	374		98.73

Less:

Warehouse Charges	.40	
Auction Fees	.75	
Commission 2½ per cent	2.48	3.63
		95.10

[fol. 852] Bill No. 7. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-16-1926.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
850	130	28	36.40
	220	25	55.00
	250	29	72.50
	222	29	64.38
	294	30	88.20
	220	30	66.00
	114	17	19.38
	206	20	59.74
	184	20	53.36
	120	18	21.60
	1960		536.56

Less:

Warehouse Charges	1.96	
Auction Fees	4.00	
Commission, 2½ per cent	13.40	18.36
		518.20

[fol. 853] Bill No. 8. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-23-1926.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
261	300	30	90.00
	198	30	59.40
	260	29	75.40
	94	27	25.38
	144	11²	16.56
	186	11³	21.45
	98	27	26.46
	258	12	30.96
	1538		345.61

Less:

Warehouse Charges	1.50	
Auction Fees	3.80	
Commission, 2½ per cent	8.61	
		13.91
		331.70

[fol. 854] Bill No. 9. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-23-1926.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
432	80	9²	7.60
	84	28	23.52
	124	30	37.20
	254	8	20.32
	272	3²	87.04
	184	27	49.68
	998		225.36

Bill No. 9. 1926 P. L. M.—Continued

		Total
Less:		
Warehouse Charges	1.08	
Auction Fees	1.88	
Commission, 2½ per cent	5.60	
		8.56
		216.80

[fol. 855] Bill No. 10. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-25-1926.

Sale made for H. H. Moore.

No.	Pounds	Cost	Total
434	146	28	40.88
	106	8	8.48
	192	7	13.44
	220	10²	23.65
	214	8	17.12
	60	7	4.35
	114	8	9.12
	180	10	18.00
	180	10	18.00
	112	18²	20.72
	94	7	6.58
	1618		180.34

Less:		
Warehouse Charges	1.61	
Auction Fees	3.05	
Commission, 2½ per cent	4.58	9.24
		171.10

[fol. 856] Bill No. 11. 1926. P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-13-1926.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
431	112	26	29.12
	110	27	29.70
	116	25	29.00
	82	24	20.09
	104	25	26.00
	150	25	37.50
	110	25	27.50
	110	23⁵	25.85
	150	20	30.00
	150	23	34.96
	116	20	23.20
	130	20	26.00
	1442		338.92

Less:		
Warehouse Charges	1.54	
Auction Fees	2.90	
Commission 2½ per cent	8.48	12.92
		326.00

[fol. 857] Bill No. 12. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8/3 1926.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
500	162	23	37.26
	136	26	35.36
	150	26	39.00
	128	18	23.04

Bill No. 12. 1926 P. L. M.—Continued

Pounds	Price	Total
118	26	30.68
146	24²	35.77
148	24	35.52
134	20	26.80
162	18	29.16
172	25	43.00
1456		335.59

Less:

Warehouse Charges	1.46	
Commission, 2½ per cent	8.38	
Auction Fees	2.50	
		12.34
		323.25

[fol. 858] Bill No. 13. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-9-1926.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
750	136	22²	30.60
	94	24²	23.03
	210	22	46.20
	80	29	23.20
	110	29	31.90
	170	22²	38.25
	104	27	28.08
	114	30	34.20
	34	25	8.50
	62	15	9.30
	1114		273.26

Less:

Warehouse Charges	1.15	
Auction Fees	1.95	
Commission, 2½ per cent	6.86	9.96
		263.30

[fol. 859] Bill No. 14. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-18-1926.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
2900	124	19	23.56
	100	9	9.00
	324	18	58.32
	320	23²	75.20
	280	25	70.00
	166	23²	39.01
	294	28	82.32
	254	28	71.12
	264	25	66.00
	164	25	41.00
	2290		535.53

Less:		
Warehouse Charges	2.29	
Auction Fees	4.00	
Commission, 2½ per cent	13.34	17.63
		517.90

[fol. 860] Bill No. 15. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-20-1926.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
42	134	29	38.86
	228	28	63.84
	226	15	33.90
	588		136.60

Less:		
Warehouse Charges	.59	
Auction Fees	1.25	
Commission, 2½ per cent	3.46	5.30
		131.30

[fol. 861] Bill No. 16. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Prop.

Douglas, Ga., —— —, 192-.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
253	90	10	9.00
	62	12²	7.75
	302	33	99.66
	300	35	105.00
	136	37	50.32
	296	25	74.00
	294	35	102.90
	74	24	17.76
	1554		466.39

Less:

Warehouse Charges	1.41	
Auction Fees	3.20	
Commission, 2½ per cent	11.68	16.29
		450.10

[fol. 862] Bill No. 17. 1926 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-9-1926.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
259	304	6	18.24
	180	7³	13.95
	250	22²	56.25
	266	7³	20.61
	1000		109.05

Less:

Warehouse Charges	1.00	
Auction Fees	1.75	
Commission, 2½ per cent	2.70	5.45
		103.60

[fol. 863] DEFENDANTS' EXHIBIT No. 2 (a)

[fol. 864]

Bill No. 1. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., —— —, 192-.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
379	168	30	50.40
	124	30	37.20
	138	29	40.02
	144	23	33.12
	160	24²	39.20
	96	10	9.60
	98	18²	18.13
	928		227.67

Less:

Warehouse Charges	2.33	
Auction Fees	1.75	
Commission, 2½ per cent	5.69	9.77
		217.90

[fol. 865]

Bill No. 2. P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., —— —, 192-.

Sale made for P. L. Moore & M.

No.	Pounds	Price	Total
813	186	22	40.92
	154	12	18.48
	156	12²	19.50
	134	8	10.72
	94	7	6.59
	120	9	10.80
	134	9	12.06
	50	74	3.62
	1028		122.68

Bill No. 2. P. L. M.—Continued.

		Total
Less:		
Warehouse Charges	2.71	
Auction Fees	2.00	
Commission, 2½ per cent	3.07	
		7.78
		114.90

[fol. 866] Bill No. 3. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., ——, 192-.

Sale made for P. L. Moore & M.

No.	Pounds	Price	Total
804	192	20	38.40
	136	25	34.00
	110	27	29.70
	144	23¢	33.84
	160	16	25.60
	166	20	33.20
	176	10	17.60
	130	18	23.40
	1214		235.74

Less:		
Warehouse Charges	3.03	
Auction Fees	2.00	
Commission, 2½ per cent	5.90	10.93
		224.81

[fol. 867] Bill No. 4. 1927 P. L. M.

Farmers New Brick Warehouse

Pegram, Easterly & Gott, Prop.

Douglas, Ga., 9-5-1927.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
50	106	6	6.36
	76	1	.76
	182		7.12

Less:		
Warehouse Charges	.52	
Auction Fees	.50	
Commission, 2½ per cent	.18	1.20
		5.92

[fol. 868] Bill No. 5. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-29-1927.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
525	160	21	33.60
	184	21	38.64
	220	21	46.20
	254	23[4]	59.69
	190	24	45.60
	150	8	12.00
	152	20[2]	31.16
	180	6	10.80
	172	8	13.76
	96	6[8]	6.48
	116	4	4.64
	144	10	14.40
	60	7[2]	4.35
	80	6	4.80
	2158		326.12

Bill No. 5. 1927 P. L. M.—Continued

		Total
Less:		
Warehouse Charges	$5.54	
Auction Fees	$4.00	
Commission, 2½ per cent	$8.15	17.69
		308.43

[fol. 869] Bill No. 6. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., —— —, 192-.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
155	180	20	36.00
	196	23	45.08
	246	20	49.20
	166	15	24.90
	206	22½	46.35
	240	22½	47.25
	86	20	17.20
	210	18	37.80
	206	20	41.20
	136	9½	13.26
	162	4	6.48
	2084		364.72

Less:		
Warehouse Charges	5.12	
Auction Fees	4.00	
Commission, 2½ per cent	9.15	18.27
		346.45

[fol. 870] Bill No. 7. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-29-1927.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
540	72	11	.79
	122	3	3.66
	132	4	5.28
	84	6	5.04
	96	2	1.92
	66	18	11.88
	80	21	16.80
	52	22	10.40
	704		55.77

Less:		
Warehouse Charges	2.14	
Auction Fees	2.00	
Commission, 2½ per cent	1.40	5.54
		50.23

[fol. 871] Bill No. 8. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., —— —, 192-.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
800	140	10	14.00
	90	8	7.20
	132	2	2.64
			23.84

Less:		
Warehouse Charges	.93	
Auction Fees	.75	
Commission, 2½ per cent	.59	2.27
Net Proceeds		21.57

[fol. 872] Bill No. 9. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., —— —, 192-.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
1600	164	27	44.28
	194	27	52.38
	166	27	44.82
	206	27	55.62
	126	27	34.02
	180	25	45.00
	196	27	52.92
	260	15	39.00
	180	10	18.00
	164	10	16.40
	1836		402.44

Less:

Warehouse Charges	4.59	
Auction Fees	3.00	
Commission, 2½ per cent	10.05	17.64
Net Proceeds		384.80

[fol. 873] Bill No. 10. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-5-1927.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
129	118	2	2.36
	40	3	1.20
	134	20[2]	27.47
	146	22[2]	32.85
	104	5	5.20
	256	22	56.32
	160	24	40.00
	196	25	49.00
	164	Pass	

Bill No. 10. 1927 P. L. M.—Continued

Pounds	Price	Total
130	25	32.50
234	21²	50.31
234	21	49.14
1916		346.85

Less:		
Warehouse Charges	4.95	
Auction Fees	3.00	
Commission, 2½ per cent	8.65	16.60
Net Proceeds		329.75

[fol. 874] Bill No. 11. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., —— —, 192-.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
	96	15	14.40

Less:		
Warehouse Charges	.25	
Auction Fees	.25	
Commission, 2½ per cent	.36	.86
		13.54

[fol. 875] Bill No. 12. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., —— —, 192-.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
1025	96	26	20.96
	136	26	35.36
	150	27	40.50
	192	28	53.76
	146	20	29.20
	200	26	52.00
	140	28	39.20
	110	28	30.80

Bill No. 12. 1927 P. L. M.—Continued

	Pounds	Price	Total
	82	29	23.78
	230	27	62.10
	250	29	72.50
	80	8[3]	7.00
	166	6	9.96
	174	5	8.70
	2152		489.82
Less:			
Warehouse Charges		4.25	
Auction Fees		5.47	
Commission, 2½ per cent		12.24	21.96
			467.86

[fol. 876] Bill No. 13. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-18-1927.

Sale made for H. H. Moore.

No.	Pounds	Price	Total
325	260	29	75.40
	150	29	43.50
	142	28	39.76
	130	29	37.70
	240	29	69.60
	192	29	55.68
	238	30	71.40
	174	32	55.68
	200	28	56.00
	216	27	58.32
	202	29	58.58
	228	29	66.12
	2376		687.74
Less:			
Warehouse Charges		5.93	
Auction Fees		4.75	
Commission, 2½ per cent		17.20	27.98
Net Proceeds			659.76

[fol. 877] Bill No. 14. 1927 P. L. M.

Farmers New Brick Warehouse

Pegram, Easterly & Gott, Prop.

Douglas, Ga., 8-15-1927.

Sale made for P. L. Moore.

No.	Pounds	Price	Total
259	140	32	44.80
	252	29	73.08
	214	30	64.20
	196	29	56.84
	120	26	31.20
	104	20	20.80
	132	22²	29.70
	154	18²	28.49
	118	18	21.24
	1430		370.35
Less:			
Warehouse Charges		3.58	
Auction Fees		2.75	
Commission, 2½ per cent		9.26	15.59
			354.76

[fol. 878] Bill No. 15. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-12-1927.

Sale made for H. Moore.

No.	Pounds	Price	Total
150	220	28	61.60
	160	27	43.20
	186	27	50.22
	154	27	41.58
	124	26	32.24
	144	25	36.00
	122	25	30.50
	26	2	.52
	1136		295.86

Bill No. 15. 1927 P. L. M.—Continued

		Total
Less:		
Warehouse Charges	3.03	
Auction Fees	2.25	
Commission, 2½ per cent	7.38	12.66
		283.20

[fol. 879] Bill No. 16. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., 8-11-1927.

Sale made for M. & Moore.

No.	Pounds	Price	Total
13	174	25	43.50
	172	26	44.72
	210	86	54.60
	158	26	41.08
	168	25	42.00
	200	27	54.00
	1082		279.90

Less:		
Warehouse Charges	2.71	
Auction Fees	2.00	
Commission, 2½ per cent	6.99	11.70
		268.20

[fol. 880] Bill No. 17. 1927 P. L. M.

The Red Warehouse

Knott & Sikes, Proprietors

Douglas, Ga., —— —, 192-.

Sales made for Miltham Moore.

No.	Pounds	Price	Total
655	110	10¢	11.27
	124	10	12.40
	176		
	172		
	170		

Bill No. 17. 1927 P. L. M.—Continued

	Pounds		Total
	170		
	214		
	206		
	1342		23.67
	234		
	1108		
Less:			
Warehouse Charges		3.35	
Auction Fees		2.50	
Commission, 2½ per cent		.57	3.42
			20.25

[fol. 881] DEFENDANTS' EXHIBIT No. 3

[fol. 882] Comparative Statement of Cost to P. L. Moore of Selling 1926 and 1927 Tobacco Crops Showing Charges Deducted by Warehouse in Said Years

	1926	1927
Gross Sales in Lbs.	22,888	20,704
Gross Sales in dollars	5,237	4,274.19
Total of all charges by warehouses	194.68	201.86
Made up of:		
"Warehouse charges"	23.16	52.62
"Auction fees"	43.58	42.32
"Commissions"	130.99	106.83

P. L. Moore

[fol. 883] DEFENDANTS' EXHIBIT No. 4

fol. 884]

[Comparative Statement of Actual Cost to P. L. Moore of Selling His 1927 Tobacco Crop Showing Charges Deducted by Warehousemen in said Year, and What It Would Have Cost Him to Market His 1927 Tobacco Crop, Had the Same Schedule of Charges Used by the Warehousemen Prior to the Year 1927 Been Used in 1927.

Summary Statement

	1927 Scale	pre-1927 Scale	% Incr.
Total of all charges by warehouses	$201.86	$165.48	21.98
Made up of:			
"Warehouse charges"	52.62	21.35	146
"Auction fees"	42.32	37.30	13.4
"Commissions"	106.83	106.83	0

Itemized Statement

(For purpose of identifying each warehouse bill of P. L. Moore for the year 1927, reference is made to the numbers placed on said bills in the upper right hand corner by P. L. Moore, above his initials.)

	1927 scale of charges		All Charges	1926 scale of charges	All Charges
Bill No. 1	"Whse. Chges."	2.33		.93	
1927 P.L.M.	"Auction fee"	1.75		1.55	
	"Commission"	5.69	9.77	5.69	8.17
Bill No. 2	"Whse. Chges."	2.71		1.08	
1927 P.L.M.	"Auction fee"	2.00		1.80	
	"Commission"	3.07	7.78	3.07	5.95
Bill No. 3	"Whse. Chges."	3.03		1.21	
1927 P.L.M.	"Auction fee"	2.00		2.00	
	"Commission"	5.90	10.93	5.90	9.11
Bill No. 4	"Whse. Chges."	.52		.21	
1927 P.L.M.	"Auction fee"	.50		.40	
	"Commission"	.18	1.20	.18	.79
Bill No. 5	"Whse. Chgs."	5.54		2.22	
1927 P.L.M.	"Auction fees"	4.00		3.70	
	"Commission"	8.15	17.69	8.15	14.07
Bill No. 6	"Whse. Chgs."	5.12		2.05	
1927 P.L.M.	"Auction fees"	4.00		3.90	
	"Commission"	9.15	18.27	9.15	15.10
Bill No. 7	"Whse. Chgs."	2.14		.85	
	"Auction fee"	2.00		1.40	
	"Commission"	1.40	5.54	1.40	3.65
Bill No. 8	"Whse. Chgs."	.93		.37	
1927 P.L.M.	"Auction fee"	.75		.65	
	"Commission"	.59	2.27	.59	1.61
[fol. 885]				W. D. Dickerson	
Bill No. 9	"Whse. Chgs."	4.59		1.83	
1927 P.L.M.	"Auction fee"	3.00		3.00	
	"Commission"	10.05	17.64	10.05	14.88
Bill No. 10	"Whse. Chgs."	4.95		1.98	
1927 P.L.M.	"Auction fee"	3.00		3.90	
	"Commission"	8.65	16.60	8.65	13.53
Bill No. 11	"Whse. Chgs."	.25		.10	
1927 P.L.M.	"Auction fee"	.25		.15	
	"Commission"	.36	.86	.36	.61
Bill No. 12	"Whse. Chgs."	4.25		2.19	
1927 P.L.M.	"Auction fee"	5.47		4.20	
	"Commission"	12.24	21.96	12.24	18.63
Bill No. 13	"Whse. Chgs."	5.93		2.38	
1927 P.L.M.	"Auction fee"	4.75		4.50	
	"Commission"	17.20	27.98	17.20	24.08
Bill No. 14	"Whse. Chgs."	3.58		1.43	
1927 P.L.M.	"Auction fee"	2.75		2.75	
	"Commission"	9.26	15.59	9.26	13.44
Bill No. 15	"Whse. Chgs."	3.03		1.21	
1927 P.L.M.	"Auction fee"	2.25		2.15	
	"Commission"	7.38	12.66	7.38	10.74
Bill No. 16	"Whse. Chgs."	2.71		1.08	
1927 P.L.M.	"Auction fee"	2.00		1.75	
	"Commission"	6.99	11.70	6.99	9.82
Bill No. 17	"Whse. Chgs."			.23	
1927 P.L.M.	"Auction fee"			.50	
	"Commission"		3.42	.57	1.30
	Total		$201.86		$165.48

(For all totals see summary statement immediately preceding this itemized statement.)

W. D. Dickerson.

[fol. 886] DEFENDANTS' EXHIBIT No. 5

[fol. 887] Call Meeting Georgia Tobacco Warehouse Association

A call meeting of the Georgia Tobacco Warehouse Association was held at Lee Grant Hotel, Fitzgerald, Ga. July 30th 1935 at 2:00 P. M. with 41 members present or represented by proxy.

Meeting was called to order by President Brown who explained that it would be necessary for Bond to be Filed with Clerk of Federal District Court in the amount of $2500.00.

Upon motion Mr. Saunders seconded by Mr. Strickland that each warehouse put up cash bond of $56.82 with Treasurer of the Association who in turn would put up this cash with Clerk. This motion when placed was duly carried and checks for this bond was given Treasurer before meeting proceeded to other business.

At this time Mr. Sibley explained to members just what stage case pending in Federal Court had reached at this time and answered such questions as members wished to ask. Discussion developed and new law passed by Legislature provides warehouse charges of 10¢ per 100# or less, for piles of over one hundred and not more than 200# 20¢, and for piles over 200# and not more than 300# 30¢ etc. Auctioneers fee and commission to be charged were more clearly expressed. Attorney Gibson stated he had just had Long Distance telephone message from Mr. Alston in which Mr. Alston stated in conference with Commissioner Linder, that Mr. Linder had requested that hearing set for 13th August be postponed. It was moved and seconded that in case our Attorneys could get case prepared that they urge hearing be had on date set. This motion was duly carried.

Meeting was advised that 90% of Georgia Warehouses had signed code of fair practices and that same was in effect. Motion duly made and seconded and unanimously [fol. 888] carried was taken to formally place this in minutes of meeting. Meeting of Governing Council was called to meet in an adjoining room to formally place code in operation and to hear any petitions that might be brought before them at this time or to hear any suggestions that might be made or to have any additional signatures to the code.

Upon motion duly made and carried President was authorized to appoint at least half dozen members of the association to attend Macon hearing and be prepared to give any testimony that might be desired by the Court. This committee was appointed as follows:

Nat Smith, Valdosta, Ga.
W. E. Fenner, Tifton, Ga.
H. B. Foxhall, Statesboro, Ga.
J. S. Bernard, Douglas, Ga.
E. E. Bullock, Blackshear, Ga.
Parks Bernard, Adel, Ga.
R. A. George, Douglas, Ga.

No further business appearing motion to adjourn was duly made and carried.

(Signed) R. W. Goodman, Secty.

Minutes annual meeting Georgia Tobacco Warehouse Association held at Lee Grant Hotel, Fitzgerald, Ga. July 11th at 10:30 A. M. 1935 with 33 warehouses represented. This being a quorum meeting was called to order by President Fred W. Brown.

Minutes last annual meeting and all call meetings were read and upon motion duly carried same was adopted as read.

Report of activities of the association for last year was made by President Brown, this report being read by Parks Bernard.

Upon motion Mr. J. S. Bernard which was seconded this [fol. 889] report was accepted and ordered filed with minutes of this meeting.

Financial report was rendered by Treasurer showing receipts and disbursements of Association for year.

Upon motion Mr. King seconded by Mr. Strickland and duly carried all Small warehouses are assessed $85.00 and others $125.00 in making up fund for legal expenses.

Motion made and carried code compliance percentage which was changed *for* 90 to 98% at June 22nd meeting was irregular and to correct this, this motion set it back to original figure of 90%. Upon investigation it was found that 39 or the 44 Georgia houses had signed. President Brown appointed himself committee to see Waycross people, J. F. Fenner and Chas. Weathersby for Moultrie and Pelham,

and Nat Smith for Suwanee Warehouse, Live Oak, Fla. It was hoped with this work the code might be signed 100%.

At this point President Brown called upon Attorney Gibson to give those present a report of the Progress being made in preparation of Association charge case.

Mr. J. C. Lanier made a short talk urging the completion of signing code agreement immediately that proper notice might be given members and the public generally.

Upon motion duly seconded and unanimously carried Fred W. Brown was elected President, J. H. McLean Vice-President, and R. W. Goodman Secretary and Treasurer with the following Board of Directors: B. B. Saunders, J. S. Bernard, E. L. Meadows, J. L. Bowen, J. B. Fenner, E. E. Bullock, R. Y. Scruggs, Claude Strickland and Willis Cobb.

It was suggested that in event completion of signatures should make Code Agreement effective Board of Directors should select Governing Council while these gentlemen were already together. They retired and later reported to meet-
[fol. 890] ing in event completion of Code Agreement following would be their Governing Council for 1935 selling Season: B. B. Saunders, E. L. Meadows, J. S. Bernard, W. E. Fenner and E. E. Bullock.

Motion Mr. King duly seconded and carried that all warehousemen cut out soliciting tobacco until 10 days before selling season for 1936 (My notes do not disclose if this motion of Mr. Talleys was ever placed before meeting for vote).

Upon motion duly made and carried dues for regular association activities for ensuing year be $50.00 per warehouse.

Motion made and carried that secretary salary for ensuing year be $25.00 per month.

At this time Mr. Leath extended the Association an invitation to hold their 1936 annual meeting at Adel, Ga. time being left for arrangements later.

This meeting having been in almost continuous session all day a motion to adjourn was unanimously carried.

(Signed) R. W. Goodman, Secty.

A call meeting of the Georgia Tobacco Warehouse Association was held at the Lee-Grant Hotel, Fitzgerald, Ga. June 22nd at 2:00 P. M. with thirty-five members present or represented.

Minutes of call meeting held on 8th were read.

President explained meeting was called to consider reports of committees appointed at meeting of the 8th.

Report from committee appointed to consult with attorneys was made and after discussion it was found that assessment made at last meeting for employments of attorneys was not sufficient. Motion was duly made and carried making an additional assessment of $75.00 per warehouse. Motion by Mr. Saunders and unanimously carried that Secre- [fol. 891] tary and Treasurer be empowered to make draft for $25.00 per warehouse in event committee in charge of contracting with attorneys found the additional amount would be needed. Mr. Saunders explained he made this motion simply to prevent necessity for calling an additional meeting in case it was found more funds than had been provided for was required.

President Brown announced the appointment of Mr. John Bernard and Mr. B. B. Saunders as addition to legal committee.

Upon motion duly made and carried President Brown was authorized to turn back to J. C. Lanier funds coming back from National Tobacco Association to carry on mutual code work.

Upon motion duly made and carried deposit required for code enforcement be reduced *for* $500.00 to $250.00 and that the code become effective when 98% have signed it.

No further business appearing motion to adjourn was carried.

(Signed) R. W. Goodman, Secty.

Call meeting of Georgia Tobacco Warehouse Association was held at Hotel Lee Grant, Fitzgerald, Ga., June 8th 1935 eleven o'clock A. M. Meeting was called to order by the President with thirty-four warehouses present or represented.

Minutes of last annual meeting were read.

Objects of call meeting was explained by Mr. W. E. Fenner as being consideration of bill passed by last Legislature fixing warehouses charges permitted in Georgia. Short talks by various member- present upon this subject.

Motion by Mr. John Bernard — make this year's dues $50.00 per warehouse, duly seconded and carried.

At this point a short talk was made to meeting by J. C. Lanier and J. C. Gibson.

[fol. 892] Upon motion duly made seconded and carried, President Brown was authorized to appoint Committee to consult and employ Attorneys. This committee was appointed as follows:

S. L. Fleetwood, Tifton, Ga.
Parks Bernard, Adel, Ga.
Holton Wallace, Moultrie, Ga.

Upon Motion duly made and carried Chairman also appointed the following committee to see that contract to uphold old charges until constitutionality of bill has been decided as follows:

J. K. Larkin, Waycross and Blackshear.
W. L. Leath, Hahira.
J. C. Vann, Vidalia and Baxley.
Bud McLean, Douglas.
J. B. Fenner, Moultrie.
B. B. Saunders, Nashville.
Willie Carter, Metter.

Motion made and carried that change in code for this year to be as follows: rate per hour 18¢, maximum hours per week 60, same to apply only to hands employed in actual warehouses and that deposit of $500.00 to be made date warehouses are open for operation in some bank in his arear.

Motion by Mr. Fenner that money in hands — J. C. Lanier belonging to Georgia Warehouse Association members be turned back to the association. This motion was duly seconded and carried.

Upon motion duly carried annual meeting of the Association was called to be held at Fitzgerald, Ga., July 11th at 10:30 A. M. at Lee Grant Hotel.

No further business appearing motion *be* adjourn was duly carried.

(Signed) R. W. Goodman, Secty.

[fol. 893] Annual meeting of the Georgia Tobacco Warehouse Association was held at the Danial Tshley Hotal Valdosta, Ga. Monday noon July 2nd, 1934 with the best attendance held at any meeting for several years. Meeting was called to order by the President.

Minutes of the annual meeting held at Douglas July 29th 1933 as well as call meeting held at Myon Hotel Tifton, Ga.

May 8th 1934 were read. Upon motion duly carried these minutes were adopted as read.

Annual report of the President upon the activities of the association for the year was read. The extent of these activities burden of which was upon the President should have been listened to by every warehouseman in the state. Upon motion duly carried this report was ordered filed with these minutes as a part of same.

Annual report of the Secretary & Treasurer was read and upon motion which was carried same was accepted.

Copy of new by-laws that were adopted at the Tifton meeting were read and duly accepted by this meeting.

Upon motion duly carried, Fred W. Brown was elected President, J. L. Bowen, Tifton, Vice-President, and R. W. Goodman Secretary and Treasurer for the ensuing year. Board of Directors elected to serve for the following year are as follows: Harry W. Winstead, B. B. Saunders, C. K. Smith, R. Y. Scruggs, Paul Morgan, Willis Cobb, S. W. Stone, J. S. Bernard, and E. L. Meadows. This being a Board of nine it was ordered that an attendance of five would constitute a quorum for the transaction of business.

Upon motion Mr. Saunders which was carried unanimously, Fred W. Brown was instructed to attend meeting at White Sulphur Springs, Va. that is to be held in the next few days.

Motion duly made and carried that this meeting wishes [fol. 894] to go on record as supporting recommendation of Asheville meeting in asking for Aug. 1st opening of Georgia Tobacco Market and extending season long as necessary to properly dispose of Georgia Tobacco crop of this season.

No further business appearing upon motion and second duly carried meeting adjourned.

(Signed) R. W. Goodman, Secty.

Minutes of Special Meeting of Georgia Tobacco Warehouse Association held at Tifton, Ga., May 8th, 1934 at 3 P. M.

Meeting was called to order by its president, Mr. Fred W. Brown, and stated the main purpose of the meeting was to elect a member of Code Authority for Georgia. Upon motion duly seconded and carried Mr. Brown was elected Georgia member of Code Authority.

Secretary was requested to read letter of President Brown to Mr. J. C. Lanier, requesting no reduction be made in commissions or charges for Georgia Warehousemen for the 1934 season. After discussion of the matter it was decided that no changes should be made in charges, but that if any were made it should be higher instead of lower, due to the facts stated in President's Brown's letter to Mr. J. C. Lanier.

Upon motion by B. B. Saunders and seconded by Mr. P. E. Powell, the secretary was instructed to write a letter to Mr. J. M. Purdon, acting secretary of Georgia Tobacco Growers Association, advising him of the election of Mr. Brown as representative of Code Authority and that Mr. Brown will be glad to cooperate with him in any way possible in the interest of the warehousemen and farmers.

There being no further business the meeting adjourned.

Georgia Tobacco Warehouse Association, —— ——,
Acting Secretary.

[fol. 895] Annual meeting of Georgia Tobacco Warehouse Association was held at Douglas, Ga., July 29th, 1933.

Meeting was called to order at 1:30 P. M. with seventeen warehouses represented.

Secretary reported that seven warehouses paid their 1932 dues as follows: Three at Nashville, Piedmont at Baxley, Fenners and Twin Brick at Tifton, and Waycross Warehouse, Waycross. With this small collection he was unable to pay expenses of President Brown to Va. Beach last year of $22.00 and that he was not able to pay any of the amount due executive committee from 1931. Secretary stated if there was any warehouse representative present that did not know what the executive committee expenses were for for 1931 that two of that committee *was* present and would be glad to thoroughly explain without taking up time of meeting. Upon motion duly carried secretary report was accepted.

Upon motion duly carried secretary report was accepted.

Upon motion duly made and carried unanimously the following officers were elected for the next year: Fred W. Brown, Nashville, President, J. L. Bowen, Tifton, Vice President, R. W. Goodman, Tifton Secretary and Treasurer.

President Brown brought before the meeting at this time National Recovery Administration program. After discus-

sion the following resolution was passed: Being representatives of the farmers directly, we agree to back the government NRA program and will increase common labor 25% of the price per hour and adopt the eight hour labor schedule. We will do this without any additional cost to the farmer in the sale of his tobacco.

Upon motion duly made and carried dues for 1933 were fixed at $10.00 per warehouse with the understanding that each warehouse that had not paid 1932 dues of $3.00 would [fol. 896] be expected to include this in their remittance. Upon motion duly made and carried Valdosta was selected for the 1934 annual meeting, date to be selected later.

At this time copy of warehouse agreement of Carolina and Va. territory was submitted and discussed and upon motion duly carried President Brown appointed Messrs. Bernard, Soaper, and George to study this agreement and draft an agreement and submit it to a call meeting to be held at Valdosta August 19th at 2:00 P. M. Copy of this is enclosed for your own study.

At this time copy of warehouse agreement of Carolina Pendleton of the Government Seed Loan and the Warehouse men listened to short talk by Mr. Larsen. This address and other matters brought out at this meeting indicates how much benefit might be had at these meetings if all warehouses would attend.

No further business appearing meeting adjourned.

——— ———, Secty.

Extract from the Minutes of a Meeting of the Georgia Tobacco Warehouse Association held at Myon Hotel, Tifton, Ga. on May 8th, 1934.

The meeting took up the question of the proposed Code of Fair Competition and gave consideration to it.

"A motion was made by B. B. Saunders sec Pep Powell and passed, providing that Mr. F. W. Brown, representing the members of this organization on the Code Committee of the National Association of Auction and Loose Leaf Tobacco Warehouse Association, be authorized to present to the Agricultural Adjustment Administration and the National Recovery Administration, the Code of Fair Competition as presented and discussed at this meeting, and that the Code Committee be granted sufficient Discretionary [fol. 897] power to act for this Organization in completing said code by making such changes as might be found neces-

sary and to submit such Code to the proper Governmental agencies with request for approval."

I hereby certify that the above is a true copy of extract from the minutes of the above meeting.

—— ——, Secretary.

[fol. 898] DEFENDANTS' EXHIBIT No. 6

[fol. 899] September 24, 1935.

Hon. Tom Linder, Commissioner of Agriculture, Atlanta, Georgia.

DEAR MR. LINDER:

I am handing you a statement showing the number of pounds of tobacco sold in the Georgia markets, together with the average price per pound for the different years.

The figures from 1922 through 1935 are taken from this office—that being as far back as I am able to find records of tobacco sales.

The records from 1917 through 1921 are taken from the United States Department of Agriculture figures found in the year books of the Department of Agriculture for those years.

Average from State Records, Price from United States Year Book

1935	71,826,352 lbs.	18.91
1934	33,623,474 "	18.73
1933	59,853,963 "	11.30
1932	12,171,179 "	10.41
1931	60,881,696 "	6.41
1930	106,483,019 "	9.86
1929	90,743,520 "	18.37
1928	85,727,172 "	12.78
1927	60,196,288 "	18.92
1926	40,258,914 "	23.58
1925	49,565,841 "	14.37
1924	30,024,502 "	21.82
1923	9,101,543 "	25.70
1922	3,200,665 "	23.85
1921	7,896,000 "	25.00

1920	13,200,000 lbs.	37.00
1919	16,430,000 "	21.50
1918	2,668,000 "	46.00
1917	1,600,000 "	57.00

Sincerely yours, Garland C. Bagley, Statistician.

[fol. 900] DEFENDANTS' EXHIBIT No. 7

[fol. 901] United States Department of Agriculture

Agricultural Adjustment Administration

Washington, D. C.

March 13, 1935.

Hon. J. H. Milhollin, State Capitol, Atlanta, Ga.

DEAR MR. MILHOLLIN:

As requested by the office of Congressman Braswell Dean, we are enclosing herewith data showing sales and prices of flue-cured tobacco for the 1934 season and warehouse charges by belts.

Except for the State of Georgia, the data shown in the table enclosed herewith are with respect only to tobacco for which tax-payment warrants were issued. The data for Georgia have been made to apply to all sales for the State on the basis of sales on ten markets.

Additional data showing sales by markets for the 1934 season are now being prepared in this office and will be forwarded to you as soon as available.

Very truly yours, J. B. Hutson, Director, Division of Tobacco, Sugar, Rice, and Peanuts.

Encl.

[fol. 902] Comparative Costs of Selling Flue Cured Tobacco in All Flue Cured Belts

	Pounds Sold	Gross Dollars	Net Dollars	Warehouse Charges	% Cost
Georgia*	19,469,094	$3,664,587.49	$3,464,561.61	$200,025.88	5.458
Border Belt	102,210,447	23,191,418.91	22,210,401.55	981,017.36	4.230
Eastern N. C.	222,486,111	64,650,835.62	62,319,392.97	2,331,442.94	3.606
Middle N. C.	68,260,795	20,326,518.41	19,459,798.97	866,719.44	4.264
Old N. C. & Va.	118,490,219	33,137,162.94	31,869,132.73	1,268,030.21	3.827
Total & avg. over all belts	530,916,666	144,970,523.37	139,323,287.54	5,647,235.83	3.895

* Includes only 21 Warehouse-on 10 markets.

[fol. 903] DEFENDANTS' EXHIBIT No. 8

[fol. 904] Soaper Tobacco Warehouse

Douglas, Ga., Aug. 21, 1931.

Sale made for Buchhannon & Brown.

No.	Pounds	Price	Amount
958	34	1	.34
	72	1	.72
	106	1	1.32
			2.38
Warehouse Charges		.77	
Auction Fees		.75	
Commission, 2½% (Split)		1.06	.88
Net Proceeds			1.50

[fol. 905] Soaper Tobacco Warehouse

Douglas, Ga., 8/5, 1931.

Sale made for Wilkes & Brown.

No.	Pounds	Price	Amount
93	150	1	1.50
	154	Pass	
	146	1[2]	2.19
	166	2[2]	4.15
	462		7.84
Warehouse Charges		1.16	
Auction Fees		.75	
Commission, 2½ per cent		.19	2.10
Net Proceeds			5.74

[fol. 906] Soaper Tobacco Warehouse

Douglas, Ga., Aug. 5, 1931.

Sale made for Buckhannon & Brown.

No.	Pounds	Price	Amount
90	174	2	3.48
	124	1[4]	1.55
	298		5.03

Soaper Tobacco Warehouse—Continued

		Total
Warehouse Charges	.74	
Auction Fees	.50	
Commission, 2½ per cent	.13	1.37
Net Proceeds		3.66

[fol. 907] Soaper Tobacco Warehouse

Douglas, Ga., Aug. 21, 1931

Sale made for Wells & Brown.

No.	Pounds	Price	Amount
965	76	1	.76
	52	1²	.78
	130	1⁴	1.62
	50	3⁴	1.62
	412		4.78

Warehouse Charges	1.08	
Auction Fees	1.00	
Commission, 2½ per cent	.12	2.20
Net Proceeds		2.58

[fol. 908] Growers Warehouse

George & McLean, Proprietors

Douglas, Ga., Aug. 8, 1924.

Sale made for Joseph Rhymes.

No.	Pounds	Price	Total
239	140	45	63.00
40	148	49	72.52
			135.52

Warehouse Charges	.59	
Auction Fees	.50	
Commissions, 2½ per cent	3.39	4.18
		131.34
C 25%		32.83
		98.51

[Fol. 909] The Big Tobacco Warehouse

Pegram & Hester, Proprietors

Douglas, Ga., Aug. 13, 1924.

Sale made for Joe Rymes.

No.	Pounds	Price	Total
3686	62	35	21.70
	114	35	39.90
	82	36	29.52
	120	28	33.60
	136	24²	33.32
	514		158.04

Less:		
Warehouse Charges	.56	
Auction Fees	1.05	
Commissions, 2½ per cent	3.95	5.56
		152.48
C 25%		38.12
		$114.36

[fol. 910] DEFENDANTS' EXHIBIT No. 9

Affidavit of Ewell Brown of Lake Park, Georgia, made before L. A. Wisenbaker, J. P., 1268th District G. M. Lowndes County, Georgia, and the Following Original Tobacco Warehouse Bills Identified in an-Attached to said Affidavit, said Warehouse Bills Each Including a Statement of the Charges Deducted by the Warehouse:

B. B. Saunders Warehouse, B. B. Saunders, Proprietor, dated 8-3-1926, sale made for Ewell Brown.

Alliance Warehouse, Nat B. Smith, Proprietor, dated 8-12-26, sale made for Ewell Brown.

B. B. Saunders Warehouse, B. B. Saunders, Proprietor, dated 8-3-1926, sale made for Ewell Brown.

Saunders Warehouse, B. B. Saunders, Proprietor dated 8-25-1930, sale made for Ewell Brown.

Saunders Warehouse, B. B. Saunders, Proprietor, 8-24-1931, sale made for Ewell Brown.

All of said warehouse bills being dated at Valdosta, Georgia.

[fol. 911]

Ewell Brown

General Merchandise

Lake Park, Ga.

GEORGIA, LOWNDES COUNTY:

Personally appeared before me, Ewell Brown, who being duly sworn, on oath states that the attached are original warehouse bills of transactions of tobacco sales, tobacco sold by deponent, at B. B. Saunders and Nat Smith's Warehouses at Valdosta, Georgia. Deponent has identified said bills for purpose of this affidavit by placing his initials in the right hand corner. The sales were made for the years shown on the warehouse bills, three in 1926, one in 1930, and one in 1931.

Ewell Brown.

Sworn to and subscribed before me, this 19 day of December, 1935. L. A. Wisenbaker, J. P. 1268 Dis. G. M. Lowndes Co.

[fol. 912]

B. B. Saunders Warehouse

B. B. Saunders, Proprietor

Valdosta, Ga., Aug. 3, 1926.

Sale made for Ewell Brown.

No.	Pounds	Price	Total
1350	24	10	2.58
	90	14⁴	12.82
	144	26	37.44
	100	17²	17.50
	180	27	48.60
	170	27	45.90
	136	20	27.20
	124	15	18.60
	136	24²	33.32
	144	22	31.68
	130	20	26.00
			$301.64

Less:		
Warehouse Charges	1.44	
Auction Fees	2.55	
Commission, 2½ per cent	7.55	11.54
Net Proceeds		290.10

[fol. 913] Alliance Warehouse

Nat B. Smith, Proprietor

Valdosta, Ga., Aug. 12, 1926.

Sale made for Ewell Brown.

No.	Pounds	Price	Amount
500	90	21	18.90
	170	28	47.60
	164	30	49.20
	114	22	25.08
	180	29	52.20
	100	32	32.00
1	100	12[3]	12.75
	180	30	54.00
	200	32	64.00
	142	35	49.70
	200	34	68.00
			473.43

Less:		
Warehouse Charges	1.54	
Auction Fees	3.15	
Commission 2½ per cent	11.83	16.52
Net Proceeds		456.91

[fol. 914] B. B. Saunders Warehouse

B. B. Saunders, Proprietor

Valdosta, Ga., Aug. 3, 1926.

Sale made for Ewell Brown.

No.	Pounds	Price	Amount
1388	144	20	28.80

Less:		
Warehouse Charges	.14	
Auction Fees	.25	
Commission 2½ per cent	.71	1.10
Net Proceeds		27.70

[fol. 915] Saunders Warehouse

B. B. Saunders, Proprietor

Valdosta, Ga., Aug. 25, 1930.

No. 1467.
Name: E. Brown.

No.	Pounds	Price	Amount
105	190	4[4]	8.07
	180	7	12.60
	370		20.67

Less:		
Warehouse Charges	.93	
Auction Fees	.50	
Commission, 2½ per cent	.54	1.97
Net Proceeds		$18.70

[fol. 916] Saunders Warehouse

B. B. Saunders, Prop.

Valdosta, Ga., Aug. 24, 1931.

No. 1041.
Name: Ewell Brown.

No.	Pounds	Price	Amount
72	44	½	.22
	210	½	1.05
	140	½	.70
	136	1[3]	2.38
	176	1	1.76
	170	6	10.20
	876		16.31

Less:		
Warehouse Charges	2.33	
Auction Fees	1.75	
Commission, 2½ per cent	.43	4.51
		$11.80

[fol. 917] Defendants' Exhibit No. 10

[fol. 918] Georgia, Lowndes County:

Personally appeared before me, J. C. Ulmer, who being duly sworn on oath states that the attached is an original

warehouse bill of a transaction between deponent and B. B. Saunders, of a sale of tobacco sold by deponent at B. B. Saunders Warehouse at Valdosta, Georgia. Deponent has identified said warehouse bill for purpose of this affidavit by signing his name at the bottom of same. This tobacco sale was made in the year 1927, as shown on the warehouse bill.

J. C. Ulmer.

Sworn to and subscribed before me, this the 21st day of December, 1935. Paul Myddelton, Official Character.

[fol. 919] B. B. Saunders Warehouse

For the Sale of Leaf Tobacco.

B. B. Saunders, Proprietor

Valdosta, Ga., 8/15, 1927.

Sale Made for J. C. Ulmer.
No. 36 Gross.

No.	Pounds	Price	Total
813	156	6	9.36
	190	7[s]	14.73
	120	6	7.20
	156	13[s]	21.45
	186	25	46.50
	160	28	44.80
	180	28	50.40
	154	19	29.20
	226	20	45.20
	140	15	21
	1668		289.90

Less:

Warehouse Charges	4.17	
Auction Fees	2.75	
Commission, 2½ per cent	7.28	14.20
J. C. Ulmer		275.70

[fols. 920-921]

[fol. 922]

COMPLAINANTS' EXHIBIT No. 4

Page #4—Tobacco Warehouse Sales

Location and Name of Warehouse	Pounds Sold First Hand	Total Value	Av. Price Per Lb.	Pounds Sold For Dealers	Amount Received	Av. Price Per Lb.	Pounds Sold for Own or Other Whses.	Amount Received	Av. Price Per Lb.	Tobacco Grown in other States, Sold in Ga. Warehouses
Valdosta:										
Alliance Warehouse	1,452,290	$164,595.85	11.33	52,738	$7,058.26	13.38	88,838	$10,534.97	11.86	
Farmers Warehouse	954,216	105,353.04	11.04	25,952	2,767.12	10.66	64,548	6,382.85	9.89	175,000 (B)
Nat Smith Warehouse	2,343,748	239,698.06	10.23	119,726	10,625.07	8.87	216,934	22,865.60	10.54	
Saunders Warehouse	4,953,126	528,753.55	10.68	68,198	6,634.35	9.73	138,424	14,424.01	10.42	2,000,000 (B)
Savannah Ave. Whse.	1,817,990	215,501.35	11.51	.....	.....	.....	157,428	18,867.39	11.98	500,000 (B)
Valdosta Market	11,521,370	1,253,901.85	10.88	266,614	27,084.82	10.16	666,172	73,074.82	10.97	2,675,000 (B)
Vidalia:										
Georgia Warehouse	2,160,662	174,872.56	8.30	.....	.....	.....	.....	.....	.....	
Vann's No. 1 Whse.	2,268,516	191,815.00	8.46	19,054	1,696.43	8.90	387,126	37,281.34	9.63	1,400 (C)
Vann's No. 2 Whse.	2,234,044	181,349.40	8.12	26,760	2,888.84	10.80	213,626	20,772.95	9.72	
Vidalia Warehouse	2,709,510	216,120.97	7.98	122,884	14,812.44	12.05	78,806	5,797.85	7.36	
Vidalia Market	9,372,732	764,157.93	8.15	168,698	19,397.71	11.50	678,558	63,852.14	9.41	1,400 (C)
Waycross:										
Farmers Warehouse	1,096,091	96,945.75	8.84	47,496	4,219.52	8.88	61,714	4,614.92	7.48	
Waycross Tob. Whse.	1,518,756	141,986.13	9.35	122,920	13,838.52	11.26	113,052	11,060.83	9.78	50,000 (B)
Waycross Market	2,614,847	238,931.88	9.14	170,416	18,058.04	10.60	174,766	15,675.75	8.97	50,000 (B)
Total Tobacco Sales	106,483,019	$10,501,228.63	9.86	3,648,305	$407,027.44	11.16	7,973,655 7,973,655	x7,973,6 $770,142.97	9.66	3,177,860
Tobacco from Other States	3,177,860									
Net Georgia Sales	103,305,159									

A—Tobacco Grown in Alabama, sold in Georgia Warehouses
B— " " " Florida " " " "
C— " " " South Carolina " " "
Average yield per acre as estimated by warehouses 864 pounds.

(1930—Totals)

Compiled by Lovelace Eve, Statistician and Marcus McWhorter, Chief Clerk
Released by Eugene Talmadge Commissioner, Atlanta, Ga., September 10, 1930.

[fol. 923]

[fol. 924]

COMPLAINANTS' EXHIBIT NO. 5

1931—Georgia Tobacco Warehouses Sales—1931

Official Final Consolidated Tobacco Warehouse Report

Compiled by Georgia Department of Agriculture
Eugene Talmadge, Commissioner, State Capitol, Atlanta, Ga.

Location and Name of Warehouse	Pounds Sold First Hand	Total Value	Av. Price Per Lb.	Pounds Sold For Dealers	Amount Received	Av. Price Per Lb.	Pounds Sold for Own or Other Whses.	Amount Received	Av. Price Per Lb.	Tobacco Grown in other States, Sold in Ga. Warehouses	
Adel:											
Cook County Whse	1,022,144	$64,745.00	6.33	22,902	$1,928.72	8.42	70,114	$5,126.28	7.31		
Strickland & Saunders	1,568,392	96,924.74	6.18	113,624	8,358.15	7.36	109,526	6,418.14	5.86		
Adel Market	2,590,536	$161,669.74	6.24	136,526	$10,286.87	7.53	179,640	$11,544.42	6.43		
Bainbridge:											
Bainbridge Whse	26,652	1,022.20	3.84	.....	.....	.....	.....	.....	....		
Bainbridge Market	26,652	$1,022.20	3.84	.....	.....	.....	.....	.....	....		
Baxley:											
Piedmont Warehouse	800,638	$54,808.65	6.85	13,892	$1,450.27	10.44	52,238	$3,957.07	7.58		
Planters Warehouse	540,636	37,836.61	7.00	30,910	2,472.39	8.00	27,398	1,736.66	6.34		
Soaper's Warehouse	723,642	46,662.90	6.45	36,194	3,132.11	8.65	124,766	8,403.51	6.74		
Baxley Market	2,064,916	$139,308.16	6.75	80,996	$7,054.77	8.71	204,402	$14,097.24	6.90		
Blackshear:											
Big "Z" Warehouse	1,519,086	$107,771.05	7.09	154,986	$13,293.31	8.58	74,142	$4,672.38	6.30		
Brantley's Whse	1,198,608	88,359.51	7.37	52,372	3,499.46	6.68	75,520	3,821.58	5.06		
Farmers Warehouse	1,951,096	147,801.01	7.58	121,858	11,333.18	9.30	114,154	7,625.88	6.68		
Planters Warehouse	655,007	44,827.36	6.84	60,235	5,629.93	9.35	40,514	3,258.36	8.04		
Blackshear Market	5,323,797	$388,758.93	7.30	389,451	$33,755.88	8.67	304,330	$19,378.20	6.37		
Cairo:											
Planters Warehouse	600,170	$38,464.33	6.41	.....	.....	.....	116,256	$5,985.13	5.15	(B)	56,780
Cairo Market	600,170	$38,464.33	6.41	.....	.....	.....	116,256	$5,985.13	5.15	(B)	56,780
Camilla:											
Gravely & Nelms Whse	462,678	$26,769.32	5.79	.....	.....	.....	28,500	$1,260.95	4.42		
Camilla Market	462,678	$26,769.32	5.79	.....	.....	.....	28,500	$1,260.95	4.42		

[fol. 925]

Claxton:											
Farmers Warehouse	351,684	$23,929.75	6.80	.....	.....	.....	70,508	$4,434.27	6.29		
Tapp's Warehouse	1,147,428	69,366.92	6.05	.....	.....	.....	165,704	10,361.40	6.25	(C)	27,682
Claxton Market	1,499,112	$93,296.67	6.22	.....	.....	.....	236,212	$14,795.67	6.26	(C)	27,682
Douglas:											
The Big O. K. Whse	1,463,592	$96,034.29	6.56	58,332	$5,717.84	9.80	146,142	$8,467.79	5.79		
Farmers Brick Whse	324,712	17,772.14	5.46	38,730	5,353.69	13.82	77,352	4,342.75	5.61		
Growers Warehouse	1,637,730	102,531.33	6.26	75,152	7,871.79	10.47	155,954	9,899.85	6.35		
Red Warehouse	2,071,636	124,137.54	5.99	98,339	6,592.42	6.70	222,556	16,197.79	7.28		
Soaper's Warehouse	914,176	61,523.40	6.73	.....	.....	.....	60,428	3,874.72	6.41		
Douglas Market	6,411,846	$401,998.70	6.27	270,553	$25,535.74	9.44	662,442	$42,782.90	6.46		
Fitzgerald:											
Lon Dickey Whse	251,474	$10,328.70	4.11	1,222	$48.36	3.96	53,766	$1,832.50	3.41		
Fitzgerald Market	251,474	$10,328.70	4.11	1,222	$48.36	3.96	53,766	$1,832.50	3.41		

Douglas Market	6,411,846	$401,998.70	6.27	270,553	$25,535.74	9.44	662,442	$42,782.90	6.46		
Fitzgerald:											
Lon Dickey Whse	251,474	$10,328.70	4.11	1,222	$48.36	3.96	53,766	$1,832.50	3.41		
Fitzgerald Market	251,474	$10,328.70	4.11	1,222	$48.36	3.96	53,766	$1,832.50	3.41		
Hahira:											
Farmers Independent	482,626	$29,774.30	6.17	38,728	$3,345.13	8.64	46,446	$2,520.63	5.43		
Gold Leaf Warehouse	296,766	19,396.72	6.54	21,114	2,212.38	10.48	7,652	778.53	10.18	(B)	7,390
Hahira Warehouse	1,248,280	84,968.13	6.81	66,542	6,211.01	9.33	94,371	6,455.90	6.84		
Hahira Market	2,027,672	$134,139.15	6.62	126,384	$11,768.52	9.31	148,469	$9,755.06	6.57	(B)	7,390
Haslehurst:											
Gravely Warehouse	947,280	$66,098.80	6.98				157,018	$10,160.34	6.47		
Planters Warehouse	632,204	41,854.21	6.62	19,428	$1,943.58	10.00					
Haslehurst Market	1,579,484	$107,953.01	6.83	19,428	$1,943.58	10.00	157,018	$10,160.34	6.47		
Metter:											
Central Warehouse	554,330	$32,543.58	5.87	17,194	$1,241.44	7.22	65,942	$2,703.84	4.10		
Growers Warehouse	652,454	35,901.02	5.50	17,090	1,193.19	6.98	20,622	1,212.22	5.88		
Metter Warehouse	506,808	27,831.68	5.49	15,956	1,305.90	8.18	17,752	971.27	5.47		
Metter Market	1,713,592	$96,276.28	5.62	50,240	$3,740.53	7.45	104,316	$4,887.33	4.69		
[fol. 926]											
Moultrie:											
Farmers Warehouse	2,957,804	$193,332.14	6.54	59,040	$3,912.27	6.63	229,912	$18,882.70	8.21		
New Moultrie Whse	734,648	65,942.05	8.98	21,858	1,910.41	8.74	53,102	3,345.29	6.30		
Peoples Warehouse	3,191,140	226,823.44	7.11	67,098	7,281.44	10.85	259,802	22,355.89	8.60		
Moultrie Market	6,883,592	$486,097.63	7.06	147,996	$13,104.12	8.85	542,816	$44,583.88	8.21		
Nashville:											
Brown's Warehouse	1,322,412	$78,037.72	5.90	208,686	$16,705.48	8.01	95,244	$4,833.80	5.08		
Planters Warehouse	1,189,494	68,451.11	5.75	110,848	9,729.03	8.78	83,534	3,866.29	4.63		
Union Warehouse	1,832,356	106,204.29	5.80	109,516	8,780.63	8.02	214,408	13,640.21	6.36		
Nashville Market	4,344,262	$252,693.12	5.82	429,050	$35,215.14	8.21	393,186	$22,340.30	5.68		
Pelham:											
Big Dixie Warehouse	165,636	$11,649.45	7.03				34,344	$1,512.51	4.40		
Pelham Warehouse	635,878	35,171.35	5.53	264	$17.84	6.76	52,020	3,688.38	7.09		
Pelham Market	801,514	$46,820.80	5.84	264	$17.84	6.76	86,364	$5,200.89	6.02		
Quitman:											
Brooks County Whse	485,942	$25,394.49	5.23				33,648	$2,219.16	6.60		
Quitman Market	485,942	$25,394.49	5.23				33,648	$2,219.16	6.60		
Statesboro:											
Farmers Warehouse	739,278	$49,866.14	6.75	6,784	$285.64	4.21	115,228	$7,840.53	6.80	(C)	42,860
Holt-Cobb Warehouse	1,073,304	63,324.82					128,792	7,949.45	6.17		
Statesboro Market	1,812,582	$113,190.96	6.24	6,784	$285.64	4.21	244,020	$15,789.98	6.47	(C)	42,860
Tifton:											
Farmers Warehouse	1,905,406	$135,819.78	7.13	90,560	$8,326.27	9.19	165,302	$13,844.96	8.38	(A)	10,000
Fenners Warehouse	3,197,930	224,386.52	7.02	78,666	5,144.55	6.54	163,630	8,342.42	5.10		
Twin Brick Whse	3,176,740	209,309.35	6.59	87,466	7,216.00	8.25	110,986	6,962.62	6.27		
Tifton Market	8,280,076	$569,515.65	6.88	256,692	$20,686.82	8.06	439,918	$29,150.00	6.63	(A)	10,000
[fol. 927]											
Valdosta:											
Alliance Warehouse	647,064	$40,128.91	6.20	12,116	$1,213.52	10.02	51,554	$4,693.23	9.10		
Planters Warehouse	177,998	10,185.88	5.72	8,770	674.87	7.70	18,646	1,254.54	6.73		
Nat Smith Warehouse	1,653,085	101,487.89	6.14	33,180	2,695.38	8.12	136,864	10,196.41	7.45	(B)	500,000
[illegible] Warehouse	2,888,736	179,436.49	6.21	34,186	2,717.79	7.95	98,074	6,580.73	6.71	(B)	1,000,000
										(B)	700,000

Farmers Warehouse	2,957,804	$193,332.14	6.54	59,040	$3,912.27	6.63	229,912	$18,882.70	8.21		
New Moultrie Whse	734,648	65,942.05	8.98	21,858	1,910.41	8.74	53,102	3,345.29	6.30		
Peoples Warehouse	3,191,140	226,823.44	7.11	67,098	7,281.44	10.85	259,802	22,355.89	8.60		
Moultrie Market	6,883,592	$486,097.63	7.06	147,996	$13,104.12	8.85	542,816	$44,583.88	8.21		
Nashville:											
Brown's Warehouse	1,322,412	$78,037.72	5.90	208,686	$16,705.48	8.01	95,244	$4,833.80	5.08		
Planters Warehouse	1,189,494	68,451.11	5.75	110,848	9,729.03	8.78	83,534	3,866.29	4.63		
Union Warehouse	1,832,356	106,204.29	5.80	109,516	8,780.63	8.02	214,408	13,640.21	6.36		
Nashville Market	4,344,262	$252,693.12	5.82	429,050	$35,215.14	8.21	393,186	$22,340.30	5.68		
Pelham:											
Big Dixie Warehouse	165,636	$11,649.45	7.03	.....	.....	.....	34,344	$1,512.51	4.40		
Pelham Warehouse	635,878	35,171.35	5.53	264	$17.84	6.76	52,020	3,688.38	7.09		
Pelham Market	801,514	$46,820.80	5.84	264	$17.84	6.76	86,364	$5,200.89	6.02		
Quitman:											
Brooks County Whse	485,942	$25,394.49	5.23	.....	.....	.....	33,648	$2,219.16	6.60		
Quitman Market	485,942	$25,394.49	5.23	.....	.....	.....	33,648	$2,219.16	6.60		
Statesboro:											
Farmers Warehouse	739,278	$49,866.14	6.75	6,784	$285.64	4.21	115,228	$7,840.53	6.80	(C)	42,860
Holt-Cobb Warehouse	1,073,304	63,324.82	....	.....	.....	.....	128,792	7,949.45	6.17		
Statesboro Market	1,812,582	$113,190.96	6.24	6,784	$285.64	4.21	244,020	$15,789.98	6.47	(C)	42,860
Tifton:											
Farmers Warehouse	1,905,406	$135,819.78	7.13	90,560	$8,326.27	9.19	165,302	$13,844.96	8.38	(A)	10,000
Fenners Warehouse	3,197,930	224,386.52	7.02	78,666	5,144.55	6.54	163,630	8,342.42	5.10		
Twin Brick Whse	3,176,740	209,309.35	6.59	87,466	7,216.00	8.25	110,986	6,962.62	6.27		
Tifton Market	8,280,076	$569,515.65	6.88	256,692	$20,686.82	8.06	439,918	$29,150.00	6.63	(A)	10,000
[fol. 927]											
Valdosta:											
Alliance Warehouse	647,064	$40,128.91	6.20	12,116	$1,213.52	10.02	51,554	$4,693.23	9.10		
Planters Warehouse	177,998	10,185.88	5.72	8,770	674.87	7.70	18,646	1,254.54	6.73		
Nat Smith Warehouse	1,653,085	101,487.89	6.14	33,180	2,695.38	8.12	136,864	10,196.41	7.45	(B)	500,000
B. B. Saunders Whse	2,888,736	179,436.49	6.21	34,186	2,717.79	7.95	98,074	6,580.73	6.71	(B)	1,000,000
Savannah Ave. Whse	1,747,570	127,541.24	7.30	.....	.....	.....	167,386	12,586.73	7.52	(B)	700,000
Valdosta Market	7,114,453	$458,780.41	6.45	88,252	$7,310.56	8.27	472,524	$35,311.64	7.47	(B)	2,200,000
Vidalia:											
Vanns Warehouse	2,534,148	$115,945.27	4.58	50,468	$4,640.06	9.20	237,870	$14,834.29	6.24		
Vidalia Warehouse	2,311,602	106,646.36	4.61	59,174	6,295.72	10.64	156,300	9,351.53	5.08		
Vidalia Market	4,845,750	$222,591.63	4.59	109,642	$10,935.78	9.97	394,170	$24,185.82	6.14		
Waycross:											
Farmers Warehouse	724,588	$52,326.74	7.22	27,692	$2,153.67	7.78	45,582	$2,555.35	5.61		
Waycross Tob. Whse	1,037,008	74,444.94	7.18	53,198	4,954.46	9.31	100,680	6,886.14	6.84		
Waycross Market	1,761,596	$126,771.68	7.20	80,890	$7,108.13	8.79	146,262	$9,441.49	6.46		
Total Tobacco	60,881,696	$3,901,841.56	6.41	2,194,370	$188,789.28	8.60	4,812,355	$318,180.75	6.61		
Tobacco Grown in Other States	2,344,712	150,296.04									
Net Georgia Sales	58,536,984	$3,751,545.52	6.41								

A—Tobacco Grown in Alabama.
B— " " " Florida.
C— " " " South Carolina.

Average Yield per acre as estimated by Warehouses, 544 pounds.

Compiled by Marcus McWhorter, State Statistician. Released by Eugene Talmadge, Commissioner.

[fol. 928]

[fol. 929]

COMPLAINANTS' EXHIBIT No. 6

1933—Georgia Tobacco Warehouses Sales—1933

Official Final Consolidated Tobacco Warehouse Report

Compiled by Georgia Department of Agriculture
H. K. Ramsey, Statistician, State Capitol, Atlanta, Ga.

Location & Name of Warehouse	Pounds Sold First-Hand	Total Value	Av. Price Per Lb.	Pounds Sold For Dealers	Amount Received	Average Price Per Lb.	Pounds Sold for Owner Other Whses.	Amount Received	Average Price Per Lb.
Adel:									
Stricklands	973,826	115,238.31	11.83	49,246	6,070.88	12.33	84,504	9,629.59	11.40
W. S. Dunn's	1,185,760	134,014.57	11.30	20,482	2,361.76	11.53	83,850	10,615.06	12.66
Total	2,159,586	249,252.88	11.54	69,728	8,432.64	12.09	168,754	20,244.65	12.00
Baxley:									
Clark's	1,098,750	121,617.06	11.69	22,888	2,903.93	12.69	73,506	9,482.25	12.90
Piedmont	650,242	69,607.13	10.70	12,760	1,713.32	13.43	61,618	7,261.61	11.78
Planter's	288,182	33,115.73	11.50	4,414	755.12	17.11	20,284	2,562.88	12.63
Total	2,037,174	224,339.92	11.01	40,062	5,372.37	13.41	155,408	19,305.74	12.42
Blackshear:									
The Big "Z"	1,632,762	197,510.32	12.09	80,194	9,514.84	11.86	108,266	12,494.05	11.54
Brantley's	1,532,004	182,736.87	11.93	106,076	12,704.61	11.98	107,706	12,988.45	12.06
Farmer's	1,861,312	207,721.48	11.15	92,718	13,873.62	14.96	104,456	11,965.90	11.46
Total	5,026,078	587,968.67	11.70	278,988	36,093.07	12.94	320,428	37,448.40	11.69
Douglas:									
Big O. K.	1,316,916	138,719.04	10.53	36,184	4,364.21	12.06	104,024	12,228.19	11.75
Farmer's New Brick	1,593,014	162,162.14	10.17	59,610	6,014.82	10.09	145,750	16,489.52	11.30
Grower's	1,136,090	123,015.08	10.82	52,878	6,657.02	12.59	94,522	10,743.39	11.36
The Red Warehouse	1,548,976	164,300.56	10.61	81,456	9,035.98	11.09	244,918	28,797.60	11.34
Soapers	1,302,996	137,035.17	10.59	10,540	1,316.84	12.49	186,358	21,536.22	11.55
Total	6,897,992	725,231.99	10.51	240,668	27,388.87	11.38	775,572	89,794.92	11.58

[fol. 930]

Hahira:									
Farmer's Independent	1,302,370	171,074.41	13.13				56,544	7,296.82	12.90
Gold Leaf	393,588	43,128.26	10.95	3,076	421.47	13.72	34,694	3,981.24	11.48
Hahira	895,734	100,500.28	11.45	5,668	713.55	12.60	109,810	13,572.85	12.36
Total	2,591,692	314,702.95	12.14	8,744	1,135.02	12.98	201,048	24,850.91	12.36
Hazlehurst:									
Gravely	928,056	105,250.81	11.34	41,912	5,066.22	12.09	137,656	17,081.07	12.41
Planters	977,198	112,951.07	11.55	12,814	1,558.31	12.16	176,150	21,003.19	11.92
Total	1,905,254	218,201.88	11.45	54,726	6,624.53	12.10	313,806	38,084.26	12.14
Metter:									
Growers	710,668	76,159.88	10.61	50,552	5,986.15	11.84	74,286	8,774.79	11.81
Metter	649,946	71,781.37	11.05	32,566	4,200.44	12.90	63,624	6,921.86	10.88
Total	1,360,614	147,941.25	10.87	83,118	10,186.59	12.26	137,910	15,696.65	11.38
Moultrie:									
Central	1,000,954	109,306.48	10.92	87,574	13,469.64	15.38	7,426	1,118.20	15.06
Farmer's	2,096,542	205,182.15	9.04	31,372	3,117.70	9.94	203,024	26,891.27	13.25
Blakes	1,346,878	127,896.51	9.50	12,466	1,632.45	13.09	1,359,344	129,528.96	9.52
People's	2,219,244	244,011.67	11.00	196,836	29,491.55	14.98	18,194	2,327.28	12.79
Total	6,663,618	686,396.81	10.25	328,248	47,711.34	14.53	1,587,988	159,865.71	10.06

Total	1,360,614	147,941.25	10.87	83,118	10,186.59	12.26	137,910	15,696.65	11.38
Moultrie:									
Central	1,000,954	109,306.48	10.92	87,574	13,469.64	15.38	7,426	1,118.20	15.06
Farmer's	2,096,542	205,182.15	9.04	31,372	3,117.70	9.94	203,024	26,891.27	13.25
Blakes	1,346,878	127,896.51	9.50	12,466	1,632.45	13.09	1,359,344	129,528.96	9.52
People's	2,219,244	244,011.67	11.00	196,836	29,491.55	14.98	18,194	2,327.28	12.79
Total	6,663,618	686,396.81	10.25	328,248	47,711.34	14.53	1,587,988	159,865.71	10.06
Nashville:									
Brown's	2,464,081	294,342.69	11.94	209,876	25,058.59	11.94	106,894	14,598.10	13.66
Planter's	1,506,102	174,235.26	11.57	69,822	11,399.61	16.33	141,518	17,758.49	12.55
Union	2,563,696	301,708.94	11.77	197,502	24,853.20	12.58	240,026	30,683.27	12.78
Total	6,533,879	770,286.89	11.79	477,200	61,311.40	12.85	488,438	63,039.86	12.91
[fol. 931]									
Pelham:									
Big Dixie	355,376	28,441.75	8.01	8,596	656.63	7.64	26,544	2,483.39	9.36
Pelham	473,974	36,217.63	7.64				51,828	4,732.10	9.13
Total	829,350	64,659.38	7.80	8,596	656.63	7.64	78,372	7,215.49	9.21
Statesboro:									
Holt-Cobb	975,148	106,299.19	10.90				137,616	16,805.27	12.21
Sheppards	1,424,284	156,433.65	11.00	13,780	1,506.51	10.93	275,402	29,949.06	10.87
Total	2,399,432	262,732.84	10.95	13,780	1,506.51	10.93	413,018	46,754.33	11.32
Tifton:									
Farmer's	3,235,016	413,576.21	12.76	308,874	37,251.59	12.06	153,378	20,047.69	13.13
Fenner's	2,751,044	325,323.19	11.82	89,030	9,731.32	10.93	171,260	16,706.22	9.75
Twin Brick	3,192,338	376,696.23	11.80	163,862	22,356.12	14.01	187,816	23,396.15	12.46
Total	9,178,398	1,115,595.53	12.16	561,766	69,339.03	12.34	512,454	60,150.06	11.73
Valdosta:									
Lowdnes-Alliance	687,646	75,828.28	11.02	42,616	5,901.79	13.85	56,336	6,953.99	12.34
Nat Smith	1,678,234	182,739.72	10.88	55,772	7,235.93	12.79	157,378	18,205.86	11.56
B. B. Saunders	2,925,728	345,202.07	11.80	74,954	9,338.43	12.46	154,826	21,415.70	13.83
Savannah, Ave	2,009,328	264,914.63	13.19	166,104	19,695.95	11.26	68,806	6,467.49	9.40
Total	7,300,936	868,684.60	11.90	339,446	41,172.10	12.13	437,346	53,043.04	12.13
Vidalia:									
Vann's #1	1,685,968	168,569.95	9.99	5,030	740.15	14.71	347,324	38,505.14	11.08
Vidalia	1,789,116	187,049.39	10.45	122,896	15,208.62	12.37	117,999	12,038.75	10.20
Total	3,475,084	355,619.34	10.23	127,926	15,948.78	12.47	465,323	50,643.89	10.90
Waycross:									
Farmer's	695,064	82,227.59	11.86	41,390	4,134.38	9.99	46,614	4,428.29	9.50
Waycross	799,812	90,282.79	11.29	48,666	6,079.06	12.49	70,092	9,126.68	13.02
Total	1,494,876	172,510.38	11.54	90,056	10,213.44	11.34	116,706	13,554.97	11.61
[fol. 932]									
State totals	59,853,963	$6,764,125.31	11.30	2,723,052	$343,092.32	12.60	6,172,571	$699,692.88	11.34
Less Tobacco raised in other states sold in Ga.	565,556	639,078.28							
Net Ga. Sales	59,288,407	$6,125,047.03							

Tobacco Raised in Other States But Sold in Georgia Warehouses

Florida	240,000
South Carolina	325,556
Total	565,556

Average yield per acre as estimated by warehousemen, 841 pounds.

Issued September 5, 1933.
H. K. Ramsey, Statistician.

[fol. 933]

[fol. 934]

COMPLAINANTS' EXHIBIT No. 7

Consolidated Tobacco Warehouse Report

Georgia 1934

Department of Agriculture

Issued by H. K. Ramsey, Statistician

Location & Name of Warehouse	Pounds Sold First Hand	Total Value	Average Price Per Lb.	Pounds Sold For Dealers	Amount Received	Average Price Per Lb.	Pounds Sold for Owner or Other Whses.	Amount Received	Average Price Per Lb.
Adel:									
Cook County	495,914	97,160.56	19.59	5,428	1,131.01	20.83	36,988	8,322.79	22.50
Leath's	694,190	132,532.34	19.09	14,104	2,552.23	18.09	54,720	11,192.00	20.45
Total	1,190,104	229,692.90	19.38	19,532	3,683.24	18.34	91,708	19,514.79	21.26
Baxley:									
Piedmont	436,808	82,294.60	18.83	7,780	1,264.09	16.25	74,420	13,911.52	17.35
Clark's	314,160	59,236.17	18.85	8,934	1,460.32	16.34	15,966	2,677.76	16.76
Total	750,968	141,530.77	18.83	16,714	2,724.41	16.30	90,386	16,589.28	16.35
Blackshear:									
The Big "Z"	582,382	101,396.89	17.41	28,044	5,861.25	20.90	44,624	7,970.05	17.00
Brantley's	424,332	74,959.16	17.66	21,930	4,220.28	19.24	34,190	6,062.66	17.33
Farmers	1,032,032	183,136.98	17.74	64,912	13,115.71	20.20	68,016	11,694.72	17.19
Total	2,038,746	359,493.03	17.63	114,886	23,197.24	20.18	146,830	25,727.43	17.22

[fol. 935]

Douglas:									
Big O. K.	969,406	161,690.38	16.68	22,308	2,845.81	12.75	51,920	7,978.52	15.36
The Red Warehouse	1,082,470	213,611.45	19.73	103,604	22,530.28	21.64	302,142	61,489.61	20.35
Soapers	1,258,868	199,821.18	15.87	40,686	8,250.05	20.27	88,384	13,836.68	15.54
Total	3,310,744	575,123.01	17.37	166,598	33,626.14	20.18	442,446	83,304.81	18.83
Hahira:									
Farmers Independent	206,134	39,443.61	19.13	5,528	1,070.38	19.36	24,836	4,501.46	18.11
Gold Leaf	611,328	115,429.96	18.85	10,324	2,382.65	23.10	53,926	9,487.04	17.59
Hahira	166,790	31,621.76	18.95	4,002	752.97	18.81	19,892	3,864.92	19.43
Total	984,252	186,495.33	18.95	19,854	4,206.00	21.18	98,654	17,853.42	18.09
Hazlehurst:									
Gravely	452,546	91,621.16	20.25	40,178	7,245.88	18.03	59,586	11,798.41	19.80
Planters	653,038	126,478.67	19.36	14,304	2,635.68	18.35	106,798	21,828.48	20.43
Total	1,105,574	218,099.83	19.72	54,482	9,881.56	18.13	166,384	33,626.89	20.81
Metter:									
Metter	294,706	46,035.07	15.63	15,016	2,294.86	15.28	33,636	5,624.50	16.72
Grower's	404,412	64,812.66	16.02	18,744	2,678.83	14.29	19,366	3,210.31	16.52
Total	699,118	110,847.73	15.85	33,760	4,973.69	14.67	53,002	8,834.81	16.66
Moultrie:									
Farmer's	1,806,900	359,133.41	19.90	53,912	11,049.87	20.49	146,718	29,490.50	20.10
Peoples	1,281,764	273,326.81	21.25	57,254	10,520.98	18.37	112,184	25,915.40	23.10
Central	1,053,518	208,923.79	19.83	13,584	2,298.65	16.92	57,104	11,892.67	20.82
Blakes	692,656	132,907.11	19.19	61,210	11,213.45	18.32	56,320	9,246.71	16.41
Total	4,834,838	974,291.12	20.15	195,960	35,082.95	18.10	372,326	76,545.28	20.56
Nashville:									
Brown's	810,090	159,980.59	19.74	117,278	29,023.80	24.74	61,526	11,942.99	19.40
	987,894	186,822.84	18.91	92,228	20,008.29	21.69	84,442	16,582.21	19.63

Moultrie:									
Farmer's	1,806,900	359,133.41	19.90	53,912	11,049.87	20.49	146,718	29,490.50	20.10
Peoples	1,281,764	273,326.81	21.25	57,254	10,520.98	18.37	112,184	25,915.40	23.10
Central	1,053,518	208,923.79	19.83	13,584	2,298.65	16.92	57,104	11,892.67	20.82
Blakes	692,656	132,907.11	19.19	61,210	11,213.45	18.32	56,320	9,246.71	16.41
Total	4,834,838	974,291.12	20.15	195,960	35,082.95	18.10	372,326	76,545.28	20.56
Nashville:									
Brown's	810,090	159,980.59	19.74	117,278	29,023.80	24.74	61,526	11,942.99	19.40
Planters	987,894	186,822.84	18.91	92,228	20,008.29	21.69	84,442	16,582.21	19.63
Union	1,516,928	282,626.98	18.63	128,680	25,410.88	19.74	129,696	21,221.51	16.36
Total	3,314,912	619,430.41	18.68	338,176	74,442.87	22.01	275,664	49,746.71	18.04
[fol. 936]									
Pelham:									
Big Dixie	451,708	75,905.47	16.80	6,686	1,026.26	15.34	42,244	5,717.06	13.53
Pelham	320,718	58,054.93	18.10	1,072	113.65	10.60	26,438	4,270.51	16.15
Total	772,426	133,960.40	17.34	7,758	1,139.91	14.69	68,682	9,987.57	14.54
Statesboro:									
Cobb-Foxall	694,404	109,431.75	15.75	13,246	2,254.45	17.02	67,128	10,803.15	16.09
Shepards	944,494	147,116.86	15.57	27,244	4,071.61	14.94	117,778	18,387.50	15.61
Total	1,638,898	256,548.61	15.65	40,490	6,326.06	15.62	184,906	29,190.65	15.79
Tifton:									
Farmer's	1,898,688	371,910.59	19.58	175,324	31,788.42	18.13	66,716	12,166.35	18.08
Fenner's	1,536,488	295,042.12	19.20	49,162	7,788.65	15.84	72,384	15,445.37	21.33
Twin Brick	2,076,530	410,070.06	19.75	96,948	16,900.27	17.41	108,056	19,346.99	17.94
Total	5,511,706	1,077,022.77	19.36	321,434	56,477.34	17.57	247,156	46,958.71	18.91
Valdosta:									
Savannah Avenue	1,301,796	273,868.03	21.04	70,594	13,695.10	19.39	36,424	6,894.42	19.00
B. B. Sanders	1,849,970	365,781.23	19.77	92,590	17,397.07	18.68	120,724	25,352.71	21.00
Nat Smith	928,600	180,693.91	19.46	47,372	9,693.93	20.46	76,202	14,124.36	18.53
Alliance	632,012	126,613.09	20.03	2,774	488.94	17.58	74,832	15,939.12	21.29
Total	4,712,378	946,956.26	20.94	213,330	41,275.04	19.35	308,182	62,310.61	20.21
Vidalia:									
Vann's	1,348,832	220,157.96	16.32				142,248	23,461.87	16.50
Vidalia	912,534	159,795.82	17.51	51,012	10,648.77	20.67	61,958	9,291.39	14.99
Total	2,261,366	379,953.78	16.80	51,012	10,648.77	20.67	204,206	32,753.26	16.04
Waycross:									
Farmer's	294,590	53,935.68	18.31	14,632	2,780.60	19.00	18,744	3,471.00	18.52
Waycross	203,034	36,380.33	17.92	8,422	1,627.32	19.32	17,386	3,414.83	19.63
Total	497,624	90,316.01	18.15	23,054	4,407.92	19.12	36,130	6,885.83	19.34
[fol. 937]									
Grand Totals	33,623,474	$6,299,761.96	18.73	1,617,040	$312,093.14	19.29	2,786,662	$519,830.05	18.70
Less Amounts sold from other States	305,388	57,199.17							
Net Totals (Georgia)	33,318,086	6,642,562.79							

Net Georgia sales for 1933, 59,288,407, which brought $6,125,047.03—25,970,321 pounds less in 1934 brought $517,515.76 more than in 1933.

Pounds Sold from Other States

Florida	104,388
Alabama	1,000
South Carolina	200,000
	305,388

Average Yield Per Acre as reported by Warehousemen: 570 Pounds.

Average South Carolina Tobacco was of low grade which accounts for average at Statesboro being so low.

Issued September 17th, 1934, by H. K. Ramsey, Statistician.

[fol. 938]

[fol. 939]

COMPLAINANTS' EXHIBIT NO. 8 AND DEFENDANTS' EXHIBIT NO. 2

Georgia Department of Agriculture

Final Consolidated Report

Tobacco Warehouse

Tom Linder, Commissioner of Agriculture

1935

Market	Warehouse	Lbs. Sold 1st Hand	Total Value	Aver. Pr. per Lb.	Lbs. Sold for Dealers	Total Value	Aver. Pr. per Lb.	Lbs. Sold for Owner or other Whse.	Total Value	Aver. Price per pound
Adel	Cook County	1,275,815	270,281.46	21.18				11,328	1,076.70	9.50
	Leath's	1,253,798	261,390.12	20.84	27,630	5,204.87	18.84	120,552	23,484.02	19.48
	Total	2,529,613	531,671.58	21.02	27,630	5,204.87	18.84	131,880	24,560.72	18.62
Baxley	Easley	1,156,102	210,990.65	18.25	40,018	7,929.01	19.81	168,734	30,223.80	17.99
	Clarks	1,132,056	210,184.93	18.56	25,682	5,295.67	20.62	111,462	19,888.64	17.84
	Planters	699,040	121,038.48	17.32	12,994	2,890.42	22.24	86,188	15,086.65	17.50
	Total	2,987,198	542,214.06	18.15	78,694	16,115.10	20.48	366,384	65,199.09	17.80
Blacksbear	Big "Z"	2,427,892	471,743.49	19.43	58,546	10,719.00	18.47	170,168	27,557.10	16.20
	Brantleys	1,646,674	313,751.01	19.05	45,790	8,713.52	19.00	102,166	17,520.23	17.14
	Farmers	1,847,586	358,118.45	19.38	116,056	25,694.58	22.06	110,650	18,562.90	16.77
	Total	5,922,152	1,143,612.95	19.31	220,392	45,037.10	20.43	382,984	63,640.23	16.62
Douglas	Red Whse	1,384,066	249,470.01	18.03	167,060	30,270.91	18.12	198,222	37,987.02	19.17
	O. K	1,826,612	334,689.12	18.32	35,604	6,349.74	17.83	110,850	18,994.43	17.13
	Growers	1,523,080	273,414.97	17.94	46,756	9,883.91	21.11	109,938	19,041.69	17.32
	Farmers Br	1,144,652	175,441.27	15.32	60,310	9,165.40	15.19	94,608	16,778.82	17.84
	Soapers	1,840,168	321,889.33	17.50	43,820	7,580.22	17.30	118,646	22,427.76	19.33
	Total	7,718,578	1,354,904.70	17.55	353,550	63,250.18	17.89	632,264	115,229.72	18.22
Hahira	Gold Leaf	1,001,638	208,307.36	20.73	58,230	11,710.46	20.10	40,446	7,272.64	18.03
	Hahira	821,142	169,138.14	20.59	36,378	7,106.15	19.53	54,996	9,872.77	17.95
	Farmers Ind	925,518	181,931.93	19.68	33,546	6,610.87	19.70	57,050	9,525.36	17.00
	Total	2,748,298	559,377.43	20.35	128,154	25,427.48	19.84	152,492	26,670.77	17.49

[fol. 940]

Hazlehurst	Farmers	1,329,220	236,932.14	17.82	13,814	2,654.66	19.21	85,506	13,782.00	16.11
	Planters	1,141,466	219,889.46	19.17	22,924	4,192.47	18.29	151,678	29,614.02	19.52
	Total	2,470,686	456,821.60	18.49	36,738	6,847.13	18.64	237,184	43,396.02	18.30
Metter	Metter	747,344	126,128.58	16.88	37,598	5,242.93	13.95	71,924	10,632.30	14.78
	Growers	910,868	153,006.68	16.79	26,680	4,583.81	17.93	52,838	8,914.05	16.87
	Total	1,658,212	279,135.26	16.83	64,278	9,826.74	15.29	124,762	19,546.35	15.67
Moultrie	Farmers	2,179,502	430,183.17	19.74	34,604	6,499.79	18.80	115,768	19,575.64	19.97
	Peoples	1,369,324	255,685.05	18.67	44,972	8,030.94	17.85	88,770	15,953.55	17.98
	#1 Central	1,761,440	342,799.27	19.46	35,020	6,495.24	18.54	125,950	23,557.31	18.70
	#2 Central	712,344	142,030.72	19.94	3,998	932.12	23.31	85,638	16,035.32	18.72
	Blakes	711,102	150,409.76	21.15	110,558	20,032.72	18.38			
	Shepards	1,364,472	277,338.41	20.32	57,904	8,861.06	15.30	78,084	14,869.01	19.05
	Total	8,098,184	1,598,446.38	19.74	287,056	50,851.87	17.71	494,210	89,990.83	18.21
Nashville	Independ	2,241,140	482,752.67	21.54	129,114	28,751.89	22.27	157,264	28,879.66	18.36
	Planters	1,907,482	381,934.82	14.26	151,636	31,526.23	20.79			
	Union	2,299,481	476,236.69	20.71	137,725	29,359.94	21.32	210,324	38,374.08	18.24
	Total	6,448,103	1,340,924.18	20.80	418,475	89,638.06	21.42	367,588	67,253.74	18.30
Pelham	Big Dixie	1,351,718	235,043.14	17.40	8,010	1,280.66	15.94	100,902	16,613.90	16.51
	Pelham	540,304	99,894.17	17.19	15,876	2,972.03	18.78	65,348	9,584.00	15.00

	Gold Leaf	1,001,638	208,307.36	20.73	58,230	11,710.46	20.10	40,446	7,272.64	18.03
	Hahira	821,142	169,138.14	20.59	36,378	7,106.15	19.53	54,996	9,872.77	17.95
	Farmers Ind	925,518	181,931.93	19.68	33,546	6,610.87	19.70	57,050	9,525.36	17.00
	Total	2,748,298	559,377.43	20.35	128,154	25,427.48	19.84	152,492	26,670.77	17.49
[fol. 940]										
Haslehurst	Farmers	1,329,220	236,932.14	17.82	13,814	2,654.66	19.21	85,506	13,782.00	16.11
	Planters	1,141,466	219,889.46	19.17	22,924	4,192.47	18.29	151,678	29,614.02	19.52
	Total	2,470,686	456,821.60	18.49	36,738	6,847.13	18.64	237,184	43,396.02	18.30
Metter	Metter	747,344	126,128.58	16.88	37,598	5,242.93	13.95	71,924	10,632.30	14.78
	Growers	910,868	153,006.68	16.79	26,680	4,583.81	17.93	52,838	8,914.05	16.87
	Total	1,658,212	279,135.26	16.83	64,278	9,826.74	15.29	124,762	19,546.35	15.67
Moultrie	Farmers	2,179,502	430,183.17	19.74	34,604	6,499.79	18.80	115,768	19,575.64	19.97
	Peoples	1,369,324	255,685.05	18.67	44,972	8,030.94	17.85	88,770	15,953.55	17.98
	#1 Central	1,761,440	342,799.27	19.46	35,020	6,495.24	18.54	125,950	23,557.31	18.70
	#2 Central	712,344	142,030.72	19.94	3,998	932.12	23.31	85,638	16,035.32	18.72
	Blakes	711,102	150,409.76	21.15	110,558	20,032.72	18.38			
	Shepards	1,364,472	277,338.41	20.32	57,904	8,861.06	15.30	78,084	14,869.01	19.05
	Total	8,098,184	1,598,446.38	19.74	287,056	50,851.87	17.71	494,210	89,990.83	18.21
Nashville	Independ	2,241,140	482,752.67	21.54	129,114	28,751.89	22.27	157,264	28,879.66	18.36
	Planters	1,907,482	381,934.82	14.26	151,636	31,526.23	20.79			
	Union	2,299,481	476,236.69	20.71	137,725	29,359.94	21.32	210,324	38,374.08	18.24
	Total	6,448,103	1,340,924.18	20.80	418,475	89,638.06	21.42	367,588	67,253.74	18.30
Pelham	Big Dixie	1,351,718	235,043.14	17.40	8,010	1,280.66	15.94	100,902	16,613.96	16.51
	Pelham	540,394	92,894.17	17.19	15,876	2,972.03	18.78	65,348	9,584.00	15.00
	Total	1,892,112	327,937.31	17.33	23,886	4,252.69	17.80	166,250	26,197.96	15.76
Statesboro	Cobb-Fox	1,241,680	218,069.31	17.56	12,586	2,005.47	15.94	168,748	24,480.30	14.51
	Sheppards	1,860,484	340,878.43	18.32	19,288	3,488.60	18.01	264,184	44,816.09	16.99
	Total	3,102,164	558,947.74	18.02	31,874	5,494.07	17.24	432,932	69,296.39	16.01
Tifton	Farmers	2,500,730	508,207.58	20.32	199,882	33,584.10	16.80	111,192	17,971.42	16.16
	Fenners	2,691,896	531,484.09	19.74	72,120	15,171.07	21.03	129,384	24,123.63	18.65
	Twin Br	2,788,702	558,875.72	20.04	125,006	23,055.92	18.44	116,990	24,147.87	20.64
	Banner	2,175,592	419,736.63	20.67	85,586	16,766.44	19.60	114,688	21,226.63	18.50
	Total	10,156,920	2,018,304.02	19.87	482,594	88,577.53	18.35	462,254	87,469.55	18.92
[fol. 941]										
Valdosta	Savannah Avenue	2,006,986	359,057.66	17.89	24,572	4,272.78	17.38	113,556	18,349.47	16.15
	B. B. Saunders	3,033,998	565,347.01	18.52	87,628	14,368.29	16.39	229,828	36,309.61	15.80
	Nat Smith	1,878,810	333,977.35	17.83	159,538	26,050.06	16.33			
	Alliance	962,558	170,397.49	17.71	135,910	19,337.01	14.30			
	Total	7,882,352	1,428,779.51	18.13	407,648	64,028.14	15.71	343,384	54,659.08	15.92
Vidalia	Vidalia	2,801,586	470,463.59	16.79	155,362	25,270.79	16.26	216,350	27,899.87	12.90
	Vanns	3,007,758	483,344.05	16.07	69,554	13,086.69	18.83	370,152	62,829.36	16.97
	Total	5,809,344	953,807.64	16.42	224,916	38,357.48	17.05	586,502	90,729.23	15.47
Waycross	Farmers	1,045,044	203,336.61	19.46	86,514	15,529.35	17.95	68,892	9,775.86	14.11
	Waycross	1,357,392	274,691.74	22.37	55,332	11,448.59	20.69	76,426	13,298.60	17.27
	Total	2,402,436	478,028.35	19.90	141,846	26,977.94	19.02	145,318	23,074.46	15.88
State Totals		71,826,352	13,582,912.71	18.91	2,927,731	539,886.38	18.44	5,026,388	866,914.14	17.25
Amounts sold from Other States		1,067,228	201,812.81							
Net Georgia Sales		70,759,124	13,281,099.90							

Compiled September 14, 1935. By Garland C. Bagley, Statistician.

[fols. 942-944] F. W. Lafrentz & Co.

Certified Public Accountants

Executive Offices New York City

22 Marietta Street Building

Atlanta, Ga.

F. W. Lafrentz, C. P. A. A. F. Lafrentz, C. P. A. Chas. S. McCulloh, C. P. A. J. Arthur Marvin, C. P. A. Harry M. Rice, C. P. A. H. H. Gardner, C. P. A.

Cable: Amdit, New York.

New York, Chicago, Boston, Atlanta, Richmond, Baltimore, Cleveland, New Orleans, Philadelphia, Washington, D. C., San Francisco, Los Angeles, Oakland, Seattle, London, Eng.

January 13, 1936.

Mr. Edward Swinson, U. S. District Court, Macon, Ga.

Dear Sir:

We are sending you herewith original identified Plaintiffs Exhibits Nos. 10 to 15, inclusive, in the Tobacco Warehouse Rate case from which Mr. H. H. Gardner testified.

We have prepared typed copies of these Exhibits and send you herewith three copies thereof for the use of the Court. One copy has been furnished to Messrs. Alston, Alston, Foster & Moise and one copy to Messrs. Wilcox, Connell & Wilcox.

One copy is being sent to Mr. Lee W. Branch at Quitman, Ga., and one copy has been made available for use to Mr. O. H. Dukes, State Capitol, Atlanta, Ga.

We Hereby Certify that these are true and correct copies of the several Exhibits identified in the records of this case as Plaintiffs Exhibits Nos. 10 to 15, inclusive.

Respectfully submitted, F. W. Lafrentz & Co., Certified Public Accountants.

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PAGE

[fol. 945]

PLAINTIFFS EXHIBIT No. 10 (Continued 1)

1931

	B. B. Saunders Valdosta	N. B. Smith Valdosta	F. W. Brown Nashville	R. E. Lyddane Waycross	R. A. George Douglas	C. B. Strickland Adel	J. M. Easterly Douglas	W. W. Bernard Vidalia	J. B. Fenner Baxley	W. B. Clark Baxley	J. P. Bunn Haselhurst	S. A. McConkey Haselhurst
Commission	$	$	$	$	$	$	$	$	$	$	$	$
Other Income												
Total	$17,134.45	$	$9,311.62	$7,727.38	$	$	$	$	$	$	$	$
Advertising	$	$	$	$	$	$	$	$	$	$	$	$
Salaries												
Interest and Exchange												
Labor												
Lost Tobacco												
Errors												
General Expense												
Auto. Expense												
Insurance												
Travel—Asso. Meeting												
Insurance—Bldg.												
Leasehold Rent												
Warehouse Interest												
Warehouse Rent	D 3,500.00			D 1,275.78	0							
Leaf												
Building Repairs												
Interest on Investment				0								
Bad Debts												
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries	1 0	1 0	1 650.00	4 3,400.00	2 0				2 0			
Total Expense	$18,379.80	$	$9,542.56	$10,341.06	$	$	$	$	$	$	$	$
				Diff. .50								
				$10,340.56								
	$1,245.35†	$2,500.00†	$230.94†	$2,613.18†	Over $3,000.00 Loss	No Figures	Out	Loss No Figures	$1,695.10	Out	Out	Out

[†Red in copy.]

[fol. 946]

PLAINTIFFS EXHIBIT No. 10 (Continued 2)

1931 (Continued)

	L. C. Pruitt Waycross	Paul Morgan Blackshear	W. L. Leath Adel	L. Oettinger Douglas	W. E. Fenner Tifton	Park Bernard Adel	J. C. Meadows Vidalia	W. F. Boggan Hahira	J. H. McLean Douglas	H. S. Blake Moultrie	H. W. Winsted Tifton	W. M. Talley Nashville
Commissions	$	$	$	$	$	$	$13,530.15	$	$	$	$19,828.70	$
Leaf											796.98†	
Other Income							1,987.90				351.14	
Total	$	$	$	$	$	$	$15,518.05	$	$	$6,800.00	$19,382.86	$11,961.90
Advertising	$	$	$	$	$	$	$	$	$	$	$	$
Salaries										4,000.00	9,015.42	
Interest and Exchange											629.00	
Labor											2,377.30	
Lost Tobacco											179.26	
Errors												
General Expense										3,800.00	1,050.09	
Auto. Expense												
Insurance											593.61	
Travel—Assn. Meeting												
Insurance—Bldg.												
Leasehold Rent												
Warehouse Interest												
Warehouse Rent				D 1,800.00			7,000.00			3,500.00	D 2,034.93	
Leaf												
Building Repairs												
Interest on Investment				1,600.00								
Bad Debts												
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries	2 0	3 0		2 2,000.00	2 0		2 Paid 2,375.00			1 0	0 0	3 0
Taxes							3 Not				1,425.88	
			Auctioneer for C. B. Strickland 1,000.00									
Total	$800.00	$1,150.35	Out	$3,061.52†	$6,434.32	Out	$2,741.95†	Out	Out	$4,500.00†	$2,077.37	$87.93†

[†Red in copy.]

[fol. 947]

PLAINTIFFS EXHIBIT No. 10 (Continued 3)

1931 (Continued)

	H. J. Hurdle Hahira	R. A. Hughes Douglas	R. A. Hughes Baxley	J. S. Bernard Douglas	A. W. Jeffreys Tifton	E. W. Bullock Blackshear	R. M. Sanford	W. C. Spence	H. P. Foxhall Statesboro	C. K. Smith Moultrie	W. P. Moore Metter	P. H. Cannon
Commissions	$	$	$	$	$12,801.70	$13,201.58	$	$	$	$16,250.00	$	$
Leaf					1,875.76	393.10				2,700.00†		
Other Income												
Total	$	$	$	$	$14,677.46	$13,594.68	$	$	$	$13,550.00	$	$
Advertising	$	$	$	$	$405.55	$	$	$	$	$	$	$
Salaries					8,284.47	5,013.00				5,000.00		
Interest and Exchange					426.11	627.39						
Labor					1,882.35	870.14						
Lost Tobacco					133.89	93.02						
Errors												
General Expense					678.30	1,506.27				3,000.00		
Auto. Expense												
Insurance					237.62							
Travel												
Insurance—Bldg.												
Leasehold Rent												
Warehouse Interest												
Warehouse Rent					D 797.99	2,843.24				5,000.00	2,250.00	
Leaf												
Building Repairs												
Interest on Investment												
Bad Debts												
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries	1 0	4 0	2 0		0 0	2 0			2 1,500.00	1 1,000.00	2 0	
Taxes					611.09							
Total Expense	$	$	$	$	$13,457.37	$10,955.06	$	$	$	$	$	$
	$175.00†	$3,642.04†	$1,400.00†	No Record	$1,220.09	$2,639.62	Out	Out	$850.80†	$550.00	$6,600.00	Out

[†Red in copy.]

[fol. 948]

PLAINTIFFS EXHIBIT No. 10 (Continued 4)

1931 (Concluded)

	L. E. Knott Hahira	H. A. Easley Vidalia	J. S. Turner	E. Y. Wimbish	J. E. O'Hara	E. L. Moore Quitman	J. D. Rogers Cairo	R. E. Shepperd
Commissions	$	$	$	$	$	$	$	$7,516.27
Deposit								
Leaf								
Other								
Total	$	$	$	$	$	$	$	$
Advertising	$	$	$	$	$	$	$	$
Salaries								
Interest and Exchange								
Labor								
Lost Tobacco								
Errors								
General Expense								
Auto. Expense								
Insurance								
Travel								
Insurance—Bldg.								
Leasehold Rent								
Warehouse Interest								
Warehouse Rent								
Leaf								
Building Repairs								
Interest on Investments								
Bad Debts								
Taxes, Interest and Insurance								
Equipment								
Taxes							1 0	2 0
Partners Salaries	1 0	1 1,500.00						
Total Expense	$	$	$	$	$	$	$	$7,515.57
	$1,400.00	$ 0	Out	Out	Out	$2,500.00†	$550.00	$ .70

[†Red in copy.]

[fol. 949]

PLAINTIFFS EXHIBIT No. 10 (Continued 5)

1932

	B. B. Saunders Valdosta	N. B. Smith Valdosta	F. W. Brown Nashville	R. E. Lyddane Waycross	R. A. George Douglas	C. B. Strickland Adel	J. M. Easterly Douglas	W. W. Bernard Vidalia	J. B. Fenner Baxley	W. B. Clark Baxley	J. P. Dunn Hazlehurst	S. A. McConkey Hazlehurst
Commissions	$	$	$	$1,474.07	$	$	$	$	$	$	$	$
Other Income												
Total	$6,224.33	$	$	$	$	$	$	$2,079.26	$	$	$	$
Advertising	$	$	$	$	$	$	$	$	$	$	$	$
Salaries								1,003.83				
Interest and Exchange												
Labor								210.00				
Lost Tobacco												
Errors								330.00				
General Expense												
Auto. Expense												
Insurance												
Travel—Assn. Meeting												
Insurance—Bldg.												
Leasehold Rent												
Warehouse Interest						2,256.06 reduced to 700.00						
Warehouse rent	D 3,500.00		98.57	D 1,275.78	D 0			D 2,500.00	233.02			
Leaf												
Bldg. Repairs								4,000.00				
Interest on Investment				0								
Bad Debts								1,146.37				
Taxes, Interest and Insurance												
Equipment									2 Active			
Partners or Officers Salaries	1 0	1 0	3 0	4 300.00	2 0	3 0		2 3,000.00	1 Other 0			
	$8,719.87	$	$	$4,072.87	$	$	$	$12,190.20	$	$	$	$
	$2,495.54†	$1,000.00†	$197.15	$2,598.80†	Loss	$25.00	Out	$10,110.94†	$362.74	Out	Out	Out

[†Red in copy.]

[fol. 960]

PLAINTIFF'S EXHIBIT No. 10 (Continued 6)

1932 (Continued)

	L. C. Pruitt Waycross	Paul Morgan Blackshear	W. L. Leath Adel	L. Oettinger Douglas	W. E. Fenner Tifton	Park Bernard Adel	J. C. Meadows Vidalia	W. F. Boggan Hahira	J. H. McLean Douglas	H. S. Blake Moultrie	H. W. Winsted Tifton	W. M. Talley Nashville
Commissions	$	$	$	$	$	$	$	$	$	$	$6,799.98	$
Leaf											321.24	
Other Income											84.28	
Total	$	$	$	$	$	$	$	$	$	$1,500.00	$7,205.50	$
Advertising	$	$	$	$	$	$	$	$	$	$	$	$
Salaries										1,600.00	2,707.45	
Interest and Exchange											264.30	
Labor											1,378.07	
Lost Tobacco											214.97	
Errors												
General Expense										800.00	304.38	
Auto. Expense											553.01	
Insurance												
Travel—Assn. Meeting												
Insurance—Bldg.												
Leasehold Rent												
Warehouse Interest												
Warehouse Rent				D 960.00?			1,106.31			250.00	D 2,034.93	
Leaf												
Building Repairs												
Interest on Investment				1,500.00?								
Bad Debts												
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries	2 0	1 0		2 2,000.00	2 0		2 Paid 1,666.67 3 Not			1 0	0 0	3 0
Taxes											1,389.68	
			Auctioneer for C. B. Strickland 700.00									
Total	$	$	$	$	$	$	$	$	$	$	$	$
	$ 100.00	$1,752.29†	Out	$3,869.26†	$1,867.17	Out	$43.32	Out	Out	$1,150.00†	$1,641.29†	$3,500.00†

[†Red in copy.]

[fol. 987]

PLAINTIFFS EXHIBIT No. 10 (Continued 7)

1932 (Continued)

	H. J. Hurdle Hahira	R. A. Hughes Douglas	R. A. Hughes Baxley	J. S. Bernard Douglas	A. W. Jeffreys Tifton	E. E. Bullock Blackshear	R. M. Sanford Statesboro	W. C. Spence	H. P. Foxhall Statesboro	C. K. Smith Moultrie	W. P. Moore Metter	P. H. Cannon
Commissions	$	$	$	$	$5,005.86	$	$1,905.66	$	$	$	$	$
Leaf					837.07							
Other Income					57.30							
Total	$	$	$	$728.00	$5,900.23	$	$1,905.66	$	$	$6,000.00	$	$
Advertising	$	$	$	$	$620.73	$	$	$	$	$	$	$
Salaries					3,112.45		430.00			3,500.00		
Interest and Exchange					220.44		58.25					
Labor					1,324.45		112.05					
Lost Tobacco												
Errors					266.73		700.94			1,500.00		
General Expense												
Auto. Expense					557.54							
Insurance												
Travel												
Insurance—Bldg.												
Leasehold Rent												
Warehouse Interest				D 1,250.00	D 797.99		820.52			5,000.00	2,250.00	
Warehouse Rent												
Leaf												
Building Repairs				2,000.00								
Interest on Investment												
Bad Debts												
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries		2 0	2 0	2 0			3 0		2 1,000.00	1 0	1 0	
Taxes					581.35							
Total Expense	$	$	$	$	$7,481.68	$	$	$	$	$	$	$
	Out	Pooled $1,749.90†	$897.68†	Pooled $3,781.00†	$1,581.45†	No Record	$220.10†	Out	$942.16†	$4,000.00†	$5,700.00†	Out

[†Red in copy.]

[fol. 952]

PLAINTIFF'S EXHIBIT No. 10 (Continued 8)

1932 (Concluded)

	L. E. Knott Hahira	H. A. Easley Vidalia	J. S. Turner	E. Y. Wimbish	J. E. O'Hara	E. L. Moore Quitman	J. D. Rogers Cairo	R. E. Shepperd
Commissions	$	$	$	$	$	$	$	$
Deposit								
Leaf								
Other								
Total	$	$	$	$	$	$	$	$
Advertising	$	$	$	$	$	$	$	$
Salaries								
Interest and Exchange								
Labor								
Lost Tobacco								
Errors								
General Expense								
Auto. Expense								
Insurance								
Travel								
Insurance—Bldg.								
Leasehold Rent								
Warehouse Interest								
Warehouse Rent								
Leaf								
Building Repairs								
Interest on Investments								
Bad Debts								
Taxes, Interest and Insurance								
Equipment								
Taxes								
Partners Salaries	1 0	1 1,000.00					1 0	
Total Expense	$	$	$	$	$	$	$	$
	$1,150.00†	$ Small	$	$	$	$	$150.00	$

†[Red in copy.]

[fol. 953]

Plaintiffs Exhibit No. 10 (Continued 9)

—1933—

	B. B. Saunders, Valdosta	N. B. Smith Valdosta	F. W. Brown Nashville	R. E. Lyddane Waycross	R. A. George Douglas	C. B. Strickland Adel	J. M. Easterly Douglas	W. W. Bernard Vidalia	J. B. Fenner Baxley	W. B. Clark Baxley	J. P. Bunn Hazelhurst	S. A. McConkey Hazelhurst
Commission	$	$	$	$	$	$	$	$	$	$	$	$
Other Income												
Total	$19,698.48	$	$17,000.00	$6,676.57	$9,025.19	$	$	$12,593.20	$	$	$	$
Advertising	$	$	$	$	$	$	$	$	$	$	$	$
Salaries								3,519.73		1,560.00		
Interest and Exchange												
Labor								704.45		432.08		
Lost Tobacco												
Errors												
General Expense								575.88				
Auto. Expense												
Insurance												
Travel—Assn. Meeting												
Insurance—Building												
Leasehold Rent												
Warehouse Interest												
Warehouse Rent	D 3,500.00			D 1,275.78	0	1,018.90		D 2,375.00	1,133.03	1,524.13		
Leaf												
Building Repairs												
Interest on Investment				0				3,800.00				
Bad Debts												
Taxes, Interest and Insurance								1,359.40				
Equipment												
Partners or Officers Salaries	1 0	3 0	3 0	4 380.00	2 0	1 1,500.00		2 3,000.00	Active 2 Other 1 0	2 500.00		
	$	$	$13,553.59	$8,686.63	$	$	$	$15,334.46	$	$	$	$
	$11,757.74				$7,435.67			Diff. 1,009.90				
								$16,344.36				
					Furnished by J. H. McLean			Diff. 9.98†				
								$16,334.38				
	$7,940.74	$2,000.00	$3,446.41	$2,010.06†	$1,589.52	$521.58	Out	$3,741.18†	$2,818.20	$2,750.00	Out	Out

[† Red in copy.]

[fol. 984]

Plaintiffs Exhibit No. 10 (Continued 10)

1933—(Continued)

	L. C. Pruitt Waycross	Paul Morgan Blackshear	W. L. Leath Adel	L. Oettinger Douglas	W. E. Fenner Tifton	Park Bernard Adel	J. C. Meadows Vidalia	W. F. Boggan Hahira	J. H. McLean Douglas	H. S. Blake Moultrie	H. W. Winsted Tifton	W. M. Talley Nashville
Commissions	$	$	$	$	$	$	$	$	$	$	$25,698.67 162.75† 152.47	$
Other Income												
Total	$	$	$	$	$	$	$	$	$	$8,544.48	$25,688.39	$
Advertising	$	$	$	$	$	$	$	$	$	$	$	$
Salaries										4,000.00	8,507.47	
Interest and Exchange											993.68	
Labor											2,491.69	
Lost Tobacco											201.11	
Errors												
General Expense										3,250.00	1,088.31	
Auto. Expense												
Insurance											518.03	
Travel—Assn. Meeting												
Insurance—Bldg.												
Leasehold Rent												
Warehouse Interest												
Warehouse Rent				D 960.00?			2,668.67			1,350.00	D 1,989.78	
Leaf												
Building Repairs												
Interest on Investment				1,500.00?								
Bad Debts												
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries	2 0	1 Active 1 Other 0	On Salary for Lee Brown 1,000.00	3 3,000.00			2 Paid 1,500.00 3 Not		2 0	2 750.00	0 0 1,018.75	3 0
	$	$	$	$	$	$	$	$	$	$	$	$
	$600.00	$5,765.02	Out	$947.37†	$6,978.41	Out	$4,758.91	Out	$1,589.52	$805.52†	$8,879.57	$3,690.00

[† Red in copy.]

[fol. 955]

PLAINTIFFS EXHIBIT No. 10 (Continued 11)

1933 (Continued)

	H. J. Hurdle Hahira	R. A. Hughes Douglas	R. A. Hughes Baxley	J. S. Bernard Douglas	A. W. Jeffreys Tifton	E. E. Bullock Blackshear	R. M. Sanford Statesboro	W. C. Spence	H. P. Foxhall Statesboro	C. K. Smith Moultrie	W. P. Moore Metter	P. H. Cannon
Commissions	$	$	$	$11,729.50	$26,458.09	$14,864.56	$	$	$	$16,000.00	$	$
Leaf					428.30	601.03				500.00		
Other Income				43.04	218.19							
Total	$	$	$	$11,772.54	$27,104.58	$15,465.59	$	$	$	$16,500.00	$	$
Advertising	$	$	$	$	$752.69	$	$	$	$	$	$	$
Salaries					10,462.33	3,159.33				5,000.00		
Interest and Exchange					1,034.30	740.57						
Labor					2,705.66	932.38						
Lost Tobacco					45.91†	110.97						
Errors												
General Expense					891.16	1,400.84				4,000.00		
Auto. Expense					426.01							
Insurance												
Travel												
Insurance—Bldg.												
Leasehold Rent												
Warehouse Interest				D 1,250.00	D 800.09	2,367.26				5,000.00	0	
Warehouse Rent												
Leaf												
Building Repairs				2,000.00								
Interest on Investment												
Bad Debts												
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries		4 0		2 0		2 0			2 1,500.00	1 0	2 0	
Taxes					436.60							
Total Expense	$	$	$	$11,223.11	$17,462.93	$8,711.35	$	$	$	$	$	$
	Out	$1,626.59	Out	$549.43	$9,641.65	$6,754.24	Out	Out	$476.31	$2,500.00	$1,400.00	Out

[†Red in copy.]

[fol. 956]

PLAINTIFFS EXHIBIT No. 10 (Continued 12)

1933 (Concluded)

	L. E. Knott	H. A. Easley	J. S. Turner	E. Y. Wimbish	J. E. O'Hara Hahira	E. L. Moore Valdosta	J. D. Rodgers Pelham	R. E. Shepperd Statesboro
Commissions	$	$	$	$	$3,600.00	$	$	$10,743.85
Deposit								
Leaf								
Other								
Total	$	$	$	$	$	$	$	$10,743.85
	$	$	$	$	$	$	$	$
Advertising								
Salaries								
Interest and Exchange								
Labor								
Lost Tobacco								
Errors								
General Expense								
Auto. Expense								
Insurance								
Travel								
Insurance—Bldg.								
Leasehold Rent								
Warehouse Interest								
Warehouse Rent								
Leaf								
Building Repairs								
Interest on Investments								
Bad Debts								
Taxes, Interest and Insurance								
Equipment								
Taxes					1 0	3 0	1 0	1 0
Partners Salaries								$9,262.09
Total Expense	$	$	$	$	$	$	$	$1,481.76
	$	$	$	$	$1,500.00†	$1,300.00	$400.00	

[†Red in copy.]

[fol. 957]

PLAINTIFFS EXHIBIT No. 10 (Continued 13)

1934

	B. B. Saunders Valdosta	N. B. Smith Valdosta	F. W. Brown Nashville	R. E. Lyddane Waycross	R. A. George Douglas	C. B. Strickland Nashville	J. M. Easterly Douglas	W. W. Bernard Vidalia	J. B. Fenner Moultrie	W. B. Clark Baxley	J. P. Bunn Haselhurst	S. A. McConkey Haselhurst
Commissions	$	$	$	$	$	$	$	$	$	$	$	$
Other Income												
Total	$18,563.44	$	$	$2,785.59	$	$	$	$12,884.99	$	$	$	$
	$	$	$	$	$	$	$	$	$	$	$	$
Advertising								3,008.85				
Salaries												
Interest and Exchange								563.60				
Labor												
Lost Tobacco								941.67				
Errors												
General Expense												
Auto. Expense												
Insurance												
Travel—Assn. Meeting												
Insurance—Building												
Leasehold Rent												
Warehouse Interest								D 2,256.25				
Warehouse Rent	D 3,500.00			D 1,275.78								
Leaf Account												
Building Repairs				0				3,610.00				
Interest on Investment								2,001.33				
Bad Debts												
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries	1 0	3 0		(4) 2,210.00		Self 1,500.00		2 3,000.00	2 Active 1 Part 0	1 0		2 0
	$14,672.24	$	$		$	$	$		$	$	$	$
			Worked for C. B. Strickland for Salary 750.00		Pooled with 3 Others							
				$4,004.90				$15,381.70 Diff. 37.62				
								$15,344.08				
	$3,891.20	$1,800.00	$	$1,621.31†	Small Profit	$5.08	Out	$2,459.09†	$6,588.18	$650.00†	Out	$2,605.00

[†Red in copy.]

[fol. 958]

PLAINTIFFS EXHIBIT No. 10 (Continued 14)

1934 (Continued)

	L. C. Pruitt Waycross	Paul Morgan Blackshear	W. L. Leath Adel	L. Oettinger Douglas	W. E. Fenner Tifton	Park Bernard Adel	J. C. Meadows Vidalia	W. F. Boggan Hahira	J. H. McLean Douglas	H. S. Blake Moultrie	H. W. Winsted Tifton	W. M. Talley Nashville
Commissions	$	$	$	$	$	$	$	$	$	$	$22,137.08 615.33† 184.33	$
Other Income										$8,170.46	$21,706.08	$
Total	$	$	$	$	$	$	$	$	$	$	$	$
Advertising	$	$	$	$	$	$	$	$	$	1,445.00	8,273.13	
Salaries											1,169.69	
Interest and Exchange											2,237.84	
Labor											426.80	
Lost Tobacco										2,595.40	1,176.88	
Errors												
General Expense											494.87	
Auto. Expense												
Insurance												
Travel—Assn. Meeting												
Insurance—Building												
Leasehold Rent												
Warehouse Interest							1,491.60			1,350.00		
Warehouse Rent												
Leaf												
Building Repairs												
Interest on Investment												
Bad Debts												
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries	2 0	1 Active 1 Other 0	1 0		2 0	2 0	2 Paid 1,500.00 3 Not			5 2,750.00	0 0 1,028.85	2 0
Taxes												
	$	$	$	$	$	$	$	$	$	$	$	$
	$800.00	$1,504.84	$258.46	Pooled $	$6,798.25	$500.00†	$2,721.87	Out	Pooled	$30.06	$4,904.99	$5,123.36

[†Red in copy.]

[fol. 959]

PLAINTIFFS EXHIBIT No. 10 (Continued 15)

1934 (Continued)

	H. J. Hurdle Hahira	R. A. Hughes-Douglas	R. A. Hughes Baxley	J. S. Bernard Douglas	A. W. Jeffrys	E. E. Bullock Blackshear	R. M. Sanford Blackshear	W. C. Spence	H. P. Foxhall Statesboro	C. K. Smith Moultrie	W. P. Moore Metter	P. H. Cannon Metter
Commissions	$	$	$	$	$20,212.32	$10,542.71	$4,339.60	$	$	$10,000.00	$4,064.70	$
Leaf					53.54†	905.75	486.58			1,100.00	219.59	
Other Income					173.77							
Total	$	$	$	$	$20,332.55	$11,448.46	$4,826.18	$	$	$	$4,284.29	$
Advertising	$	$	$	$	$1,464.17	$	$	$	$	$	$	$
Salaries					7,616.14	3,408.10	2,062.05			4,000.00		
Interest and Exchange					1,048.21	799.50	308.69					
Labor					1,785.99	896.93	276.10					
Lost Tobacco					134.79	125.02	15.65					
Errors												
General Expense					563.96	1,001.98	615.19			2,000.00		
Auto. Expense												
Insurance							20.40					
Travel												
Insurance—Bldg.												
Leasehold Rent												
Warehouse Interest				D 1,250.00	D 801.37	D 1,456.20	0			1,500.00		
Warehouse Rent												
Leaf												
Building Repairs				3,000.00								
Interest on Investment												
Bad Debts												
Taxes, Interest and Insurance												
Equipment							1 Act. 0 1 OWN.WH. 0					
Partners or Officers Salaries	1 0	3 0		2 0	0 0		1 WEF. 0		2 1,500.00	1 0	2 0	
Taxes					439.51							
Total	$	$	$	$	$13,854.14	$7,687.73	$	$	$	$	$	$
	$2,175.00†	Pooled $2,077.22	Out	Pooled $1,108.58	$6,478.41	$3,760.73	$1,528.12	Out	$954.14†	$3,600.00	$1,869.83	Out

[†Red in copy.]

[fol. 960]

PLAINTIFFS EXHIBIT No. 10 (Continued 16)

1934 (Concluded)

	L. E. Knott	H. A. Easley Baxley	J. S. Turner Nashville	E. Y. Wimbish	J. E. O'Hara	E. L. Moore Valdosta	J. D. Rodgers Pelham	R. E. Shepperd Statesboro
Commissions	$	$4,723.92	$	$	$	$	$	$
Deposit		215.86†						
Leaf:						35.00		
Other								
Total	$	$4,508.06	$10,817.80	$	$6,100.00	$6,514.68	$	$8,708.33
Advertising	$	$	$	$	$	$	$	$
Salaries								
Interest and Exchange								
Labor								
Lost Tobacco								
Errors								
General Expense								
Auto. Expense								
Insurance								
Travel								
Insurance—Bldg.								
Leasehold Rent								
Warehouse Interest								
Warehouse Rent								
Leaf								
Building Repairs								
Interest on Investment								
Bad Debts								
Taxes, Interest and Insurance								
Equipment								
Taxes		2 0	3 0		2 0	2 0	1 0	1 0
Partners Salaries								
Total Expense	$	$3,140.82	$8,003.40	$	$	$3,954.01	$	$6,767.10
	Out	$1,367.24	$2,814.40	Out	$474.39	$2,560.67	$2,200.00	$1,941.23

[†Red in copy.]

[fol. 961]

PLAINTIFFS EXHIBIT No. 10 (Continued 17)

1935

	B. B. Saunders Valdosta	N. B. Smith Valdosta	F. W. Brown Nashville	R. E. Lyddane Waycross	R. A. George Douglas	C. B. Strickland Nashville	J. M. Easterly Douglas	W. W. Bernard Vidalia	J. B. Fenner Moultrie	W. B. Clark Baxley	J. P. Bunn Hazlehurst	S. A. McConkey Hazlehurst
Commissions	$	$	$	$	$13,179.29	$20,554.78	$9,364.95	$	$	$	$10,128.05	$
Deposited with Court	4,811.93	2,846.83	3,261.19	2,111.54	2,205.81	4,054.17	1,838.20	4,304.79	4,346.62	1,966.63	2,022.20	1,798.94
Other Income							1,311.88		24.06			
Total	$28,818.85	$	$18,883.40	$16,898.71	$15,385.10	$24,608.95	$12,515.03	$28,198.97	$21,214.74	$	$12,150.25	$
Advertising	$227.90	$	$435.65	$132.15	$	$	$	$	$	$	$	$
Salaries	5,846.77		4,898.77	2,041.75			2,773.41	3,851.00	3,621.34			
Interest and Exchange	1,605.15		978.58	1,021.02			630.18		1,217.95		1,245.00	
Labor	2,416.75		1,262.48	2,276.00			1,183.91	1,231.15	1,279.86		1,454.65	
Lost Tobacco	158.52		67.74	375.54					168.27			
Errors	53.61		667.26	71.13								
General Expense	2,168.43		1,346.39	1,745.66			905.02	4,794.37	2,201.18		601.54	
Auto. Expense	770.75		240.68	150.16								
Insurance	245.77		106.30	974.02								
Travel—Assn. Meeting	700.00											
Insurance—Bldg.	500.00											
Leasehold Rent	120.00											
Warehouse Interest	1,072.50										D 300.00	
Warehouse Rent	3,500.00	2,500.00	3,500.00	D 1,180.09	0	3,500.00	3,500.00	D 2,143.43	5,055.00	1,698.00	1,272.00	0
Leaf Account			381.07								800.97	
Building Repairs				206.12							700.00	
Interest on Investment					Use Figures			3,429.50				
Bad Debts					Furnished			1,164.95		658.00		
Taxes, Interest and Insurance					by McLean			2,625.74				
Equipment	348.16											
Deposit	250.00											
Personal Service	(1)	(3)	(2) 0	(4) 3,200.00		Auctioneer Partner Got 1,000. + ¼ Profit—C.B.S. Got 2,000. + ¾ Profit (2) 3,000.00	(2) 0	3,000.00			2,400.00	
	$19,984.31	$	$13,884.92	$13,372.64	$10,401.60	$	$8,992.52	$22,240.14	$13,543.60	$	$8,774.16	$
	$8,834.54	$5,910.83	$4,998.48	$3,526.07	$4,483.50	$7,776.57	$3,523.51	$5,958.83	$7,671.14	$3,057.00	$3,376.09	$3,662.21

[fol. 962]

PLAINTIFFS EXHIBIT No. 10 (Continued 18)

1935 (Continued)

	L. C. Pruitt Waycross	Paul Morgan Blackshear	W. L. Leath Adel	L. Oettinger Douglas	W. E. Fenner Tifton	Park Bernard Adel	J. C. Meadows Vidalia	W. F. Boggan Hahira	J. H. McLean Douglas	H. S. Blake Moultrie	H. W. Winsted Tifton	W. M. Talley Nashville
Commissions	$9,626.52	$20,083.34	$10,605.30	$14,395.63	$	$	$23,353.95	$6,990.25	$15,425.24	$	$27,903.42	$18,847.55
Deposited with Court	1,862.79	3,841.61	1,994.64	2,969.85	4,296.98	2,050.00	4,728.99	1,361.25	2,205.81	1,577.94		4,133.22
Leaf											2,140.97†	3,641.53
Other Income											271.17	
Total	$11,489.31	$23,924.95	$12,599.94	$17,365.48	$	$	$28,082.94	$	$17,631.05	$	$26,033.62	$26,622.30
Advertising	$237.58	$129.30	$203.36	$	$	$	$	$	$	$	$	$
Salaries	2,840.59	4,589.35	3,530.70	2,575.00							8,817.09	4,654.95
Interest and Exchange	564.69	1,579.19	379.91	1,586.33							1,676.11	1,171.72
Labor	1,407.90	1,438.87	1,245.44	1,990.16							2,448.37	1,870.99
Lost Tobacco				485.49							1,132.06	
Errors				62.98								
General Expense	1,678.00	1,759.49	1,045.18	2,085.70							1,269.19	
Auto. Expense	125.57											
Insurance		215.25		472.82							510.97	
Travel—Assn. Meeting												
Insurance—Building												
Leasehold Rent												
Warehouse Interest												
Warehouse Rent	1,569.33	3,108.05	2,000.00				4,201.97		D 0		D 1,995.26	5,130.04
Leaf Account			142.24	Unsold								
Building Repairs		465.45										
Interest on Investment				1,310.12					0			
Bad Debts		13.00		50.80								
Taxes, Interest and Insurance												
Equipment	25.75										1,012.18	
Taxes												
Partners or Officers Salaries	2 0	1 Active 1 Other 0	1 0	(3) 3,000.00	2 0	2 0	1 Paid 1,000.00 4 Not	1 Part Time 0	2 0	5 2,200.00	0 0	2 0
	$8,449.41	$13,297.95	$8,546.83	$13,619.40	$	$	$	$	$	$	$	$
	$3,039.90	$10,627.00	$4,053.11	$3,746.08	$9,593.89	$5,350.00	$13,234.96	$660.80	$6,750.80	$1,577.94	$7,172.28	$10,749.67

[†Red in copy.]

[fol. 963]

PLAINTIFFS EXHIBIT No. 10 (Continued 19)

1935 (Continued)

	H. J. Hurdle Hahira	R. A. Hughes Douglas	R. A. Hughes Baxley	J. S. Bernard Douglas	A. W. Jeffrys Tifton	E. E. Bullock Blackshear	R. M. Sanford Blackshear	W. C. Spence Pelham	H. P. Foxhall Statesboro	C. K. Smith Moultrie	W. P. Moore Metter	P. H. Cannon Metter
Commissions	$7,808.23	$14,490.38	$	$12,058.09	$25,750.92	$15,737.16	$	$	$10,255.20	$19,242.81	$6,884.84	$5,935.24
Deposit	1,225.60	2,825.35		1,896.28		2,892.14	2,567.83	848.91	1,502.59	4,455.41	1,370.95	1,258.33
Leaf		16.37			2,614.00†	1,204.25			853.59	2,374.97	146.11	268.58
Other		184.41		148.05	227.85							130.51
Total	$9,033.83	$17,516.51	$	$14,102.42	$23,364.77	$19,833.55	$13,243.45	$5,067.26	$12,611.38	$26,073.19	$8,401.90	$7,592.66
Advertising	$	$	$	$	$599.25	$	$	$	$	$	$	$
Salaries					8,724.80	5,701.67	3,863.00			4,350.00		1,756.50
Interest and Exchange					1,485.01	1,309.13						
Labor					2,798.57	1,715.27						
Lost Tobacco					760.24	488.22						
Errors												
General Expense					867.71	1,690.05	4,132.37			8,896.00		1,411.48
Auto. Expense												388.00
Insurance					498.03							
Travel												
Insurance—Building												
Leasehold Rent												
Warehouse Interest												
Warehouse Rent	D 0			D 1,250.00	799.14	2,667.46	0			5,625.00		747.00
Leaf												
Building Repairs												
Interest on Investment				2,000.00?								
Bad Debts												59.80
Taxes, Interest and Insurance												
Equipment												
Partners or Officers Salaries	1 0	3 0		2 0	0 0		1 Act. 0 1 Own. WH. 0	2 0	2 1,500.00	2 2,000.00	2 0	7.18
Taxes	0				516.32							
Total	$6,069.47	$	$	$12,775.52	$17,049.17	$13,571.80	$7,995.37	$4,851.39	$9,375.24	$	$	$4,369.96
	$2,964.36	$6,399.86	Out	$1,326.90	$6,315.60	$6,261.75	$5,248.08	$215.87	$3,236.13	$5,202.19	$3,381.41	$3,222.64

[fRed in copy]

[fol. 964]

PLAINTIFFS EXHIBIT No. 10 (Concluded 20)

1935 (Concluded)

	L. E. Knott Valdosta	H. A. Easley Baxley	J. S. Turner Tifton	E. Y. Wimbish Baxley	J. E. O'Hara Hahira	E. L. Moore Valdosta	J. D. Rodgers Pelham	R. E. Shepperd Statesboro
Commissions	$	$	$17,589.95	$5,474.19	$	$7,100.26	$10,140.81	$
Deposit	3,171.10		3,558.31	1,106.35	1,450.00	1,800.00	2,145.95	
Leaf		Loss 2,000.00 Not Included A/C Stolen	489.80†	483.46		752.48†	235.64	
Other			266.82			30.00		
Total	$15,131.36	$11,410.78	$20,925.28	$7,064.00	$10,000.00	$8,177.78	$12,051.12	$
Advertising	$230.52	$312.00	$	$	$	$	$	$
Salaries	3,414.86	2,648.25				1,609.00		
Interest and Exchange	1,079.38	652.61				579.13		
Labor	1,123.06	558.01				735.88		
Lost Tobacco	559.47	53.55	2,386.69			147.45		
Errors						1.77		
General Expense	1,047.19	295.57	8,282.16			1,122.68		
Auto. Expense	237.60	292.26						
Insurance		105.88				129.82		
Travel								
Insurance—Building								
Leasehold Rent								
Warehouse Interest								
Warehouse Rent	3,500.00	1,734.15	D 3,541.00		1,001.00	990.77		
Leaf								
Building Repairs								
Interest on Investment								
Bad Debts								
Taxes, Interest and Insurance								
Equipment								
Taxes								
Partners Salaries	1 0	3 0	2 0	2 0	2 0	1 0	1 0	
Total Expense	$11,192.58	$6,652.28	$14,209.85	$4,779.96	$	$5,316.50	$6,057.05	$ No Record
	$3,938.68	$4,758.50	$6,715.43	$2,284.04	$3,050.00	$2,861.28	$5,994.07	$

[†Red in copy.]

[fol. 965]

PLAINTIFFS EXHIBIT No. 11 (Continued 1)

1931

				Plant Investment	Funds Used	Profit or Loss† Reported	Salaries Charged	Depreciation Charged	Interest on Investment Charged	Tonnage Department of Agriculture	Value
										34,186	$2,717.79
B. B. Saunders	Saunders Whse.	Valdosta		$.....	$.....	$1,245.35†	1 0	$3,500.00	$.....	2,888,736	179,436.49
										33,180	2,695.38
N. B. Smith	Nat. Smiths Whse.	"	Eqpt.	4,000.00	.....	2,500.00†	1 0	.....	.....	1,653,085	101,487.89
										208,686	16,705.48
F. W. Brown	Browns Whse.	Nashville		.....	.....	230.94†	1 650.00	.....	.....	1,322,412	78,037.72
										53,198	4,954.46
R. E. Lyddane	Waycross Tob. Whse.	Waycross		29,387.25	.....	2,613.18†	4 3,400.00	1,275.78	0	1,037,008	74,444.94
			1922							75,152	7,871.79
R. A. Geroge	Growers Whse.	Douglas		34,500.00	.....	+3,000.00†	2 0	.....	.....	1,637,730	102,531.33
										113,624	8,358.15
C. B. Strickland		Adel		.....	.....	No Record	.....	.....	.....	1,568,392	96,924.74
J. M. Easterly				.....	.....	Out	.....	.....	.....	.....	.....
			1927							50,468	4,640.06
W. W. Bernard	Vanns Whse.	Vidalia		58,000.00	.....	Small Loss	3,000.00?	2,500.00?	4,000.00?	2,534,148	115,945.27
							WEF.				
J. B. Fenner		Baxley		.....	.....	1,695.10	2 0	.....	.....	.....	.....
W. B. Clark				.....	.....	Out	.....	.....	.....	.....	.....
J. P. Bunn				.....	.....	Out	.....	.....	.....	.....	.....
S. A. McConkey				.....	.....	Out	.....	.....	.....	.....	.....
L. C. Pruitt	Farmers Whse.	Waycross		.....	.....	800.00	2 0	.....	.....	.....	.....
			Mother				WEF.			154,986	13,293.31
Paul Morgan	Big Z Whse.	Blackshear	Owns	.....	.....	1,150.35	2 0	.....	.....	1,519,086	107,771.05
W. L. Leath		Adel		.....	.....	Out	.....	1,800.00	1,600.00	.....	.....
			1925		8,500.00					58,332	5,717.84
L. Oettinger	Ok Whse.	Douglas		24,200.00	50,000.00	3,061.52†	2 2,000.00	1,800.00	1,600.00	1,463,592	96,034.29
										78,666	5,144.75
W. E. Fenner	Fenners Whse.	Tifton		.....	.....	6,434.32	2 0	.....	.....	3,197,930	224,386.52
Park Bernard				.....	.....	Out	.....	.....	.....	.....	.....
			1917				3 Not			59,174	6,295.72
J. C. Meadows	Vidalia Tob. Whse.	Vidalia		74,000.00	80,000.00	2,741.95†	2 2,375.00	.....	7,000.00	2,311,602	106,646.36
W. F. Boggan				.....	.....	Out	.....	.....	.....	.....	.....
J. H. McLean				.....	.....	Out	.....	.....	.....	.....	.....
										21,858	1,910.41
H. S. Blake	New Moultrie Whse.	Moultrie	Own—Burned	.....	.....	4,500.00†	1 0	.....	3,500.00	734,648	65,942.05
										87,466	7,216.00
H. W. Winsted	Twin Brick Whse.	Tifton		80,562.52	.....	2,077.37	0 0	2,034.93	.....	3,176,740	209,309.35
										109,516	8,780.63
W. M. Talley	Union Whse.	Nashville		.....	.....	87.93†	3 0	.....	.....	1,832,356	106,204.29
										22,902	1,928.72
Cook County Whse.		Adel		.....	.....	.....	.....	.....	.....	1,022,144	64,745.00
Bainbridge Whse.		Bainbridge		.....	.....	.....	.....	.....	.....	26,652	1,022.20
										13,892	1,450.27
Piedmont Whse.		Baxley		.....	.....	.....	.....	.....	.....	800,638	54,808.65
										30,910	2,472.39
Planters Whse.		"		.....	.....	.....	.....	.....	.....	540,636	37,836.61
										60,235	5,629.93
" "		Blackshear		.....	.....	.....	.....	.....	.....	655,007	44,827.36
Brantley Whse.		"		.....	.....	.....	.....	.....	.....	.....	.....
Gravely & Nelms Whse.		Camilla		.....	.....	.....	.....	.....	.....	462,678	26,769.82
Farmers Whse.		Claxton		.....	.....	.....	.....	.....	.....	351,684	23,929.75
Forward				$304,649.77	$.....	$7,823.73†	28 11,425.00	$12,906.71	$17,700.00		

[†Red in copy.]

[fol. 966]

PLAINTIFFS EXHIBIT No. 11 (Continued 2)

1931 (Concluded)

				Plant Investment	Funds Used	Profit or Loss† Reported		Salaries Charged	Depreciation Charged	Interest Investment Charged	Tonnage Department of Agriculture	Value	
Forward				$304,649.77	$.....	$7,823.73†	28	11,425.00	$12,906.71	$17,700.00			
											38,728	$3,345.13	
H. J. Hurdle	Farmers Independent	Hahira		14,000.00	.....	175.00†	1	0	0	0	482,626	29,774.30	
R. A. Hughes	Soapers Tob. Whse.	Douglas		.....	.....	3,642.04	4	0	.....	.....	914,176	61,523.40	
											36,194	3,132.11	
R. A. Hughes	Soapers Whse.	Baxley		.....	.....	1,400.00†	2	0	.....	.....	723,642	46,662.90	
			1928								98,339	6,592.42	
J. S. Bernard	Red Whse.	Douglas		34,500.00	.....	No Record		.....	.....	.....	2,071,636	124,137.54	
			1928								90,560	8,326.27	
A. W. Jeffreys	Farmers Whse.	Tifton		36,386.90	.....	1,220.09	0	0	797.99	0	1,905,406	135,819.78	
											121,858	11,333.18	
E. E. Bullock	" "	Blackshear		.....	.....	2,639.62	2	0	.....	.....	1,951,096	147,801.01	
R. M. Sanford				.....	.....	Out		.....	.....	.....	.....	.....	
W. C. Spence				.....	.....	Out		.....	.....	.....	.....	.....	
H. P. Foxhall	Cobb & Foxhall	Statesboro		.....	.....	850.30†	2	1,500.00	.....	.....	1,073,304	63,324.82	
											59,040	3,912.27	
C. K. Smith	Farmers	Moultrie		.....	.....	550.00	1	1,000.00	.....	.....	2,957,804	193,332.14	
											17,090	1,193.19	
W. P. Moore	Growers	Metter		.....	.....	6,600.00	2	0	.....	.....	652,454	35,901.02	
P. H. Cannon				.....	.....	Out		.....	.....	.....	.....	.....	
	Hahira										87,656	8,423.39	
L. E. Knott	Gold Leaf	Hahira		.....	.....	1,400.00	1	0	.....	.....	1,545,046	104,364.85	
							3	No Record					
H. A. Easley	Vidalia 1 & 2	Vidalia		.....	40,000.00	0	1	1,500.00	.....	.....	.....	.....	
J. S. Turner				.....	.....	Out		.....	.....	.....	.....	.....	
E. Y. Wimbish				.....	.....	Out		.....	.....	.....	.....	.....	
J. E. O'Hara				.....	.....	Out		.....	.....	.....	.....	.....	
E. L. Moore		Quitman		.....	.....	2,500.00†		.....	.....	.....	485,942	25,394.49	
J. D. Rodgers		Cairo		.....	.....	550.00	1	0	.....	.....	600,170	38,464.33	
R. E. Shepperd		Claxton		.....	.....	.70	2	0	.....	.....	1,147,428	69,366.92	
											38,730	5,353.69	
Farmers Brick		Douglas		.....	.....	.....		.....	.....	.....	324,712	17,772.14	
											1,222	48.36	
Lon Dickey		Fitzgerald		.....	.....	.....		.....	.....	.....	251,474	10,328.70	
Gravely Whse.		Haselhurst		.....	.....	.....		.....	.....	.....	947,280	66,098.80	
											19,428	1,943.58	
Planters Whse.		"		.....	.....	.....		.....	.....	.....	632,204	41,854.21	
											17,194	1,241.44	
Central Whse.		Metter		.....	.....	.....		.....	.....	.....	554,330	32,543.48	
											15,956	1,305.90	
Metter Whse.		"		.....	.....	.....		.....	.....	.....	506,808	27,831.68	
											67,098	7,281.44	
Peoples Whse.		Moultrie		.....	.....	.....		.....	.....	.....	3,191,140	226,823.44	
											110,848	9,729.03	
Planters		Nashville		.....	.....	.....		.....	.....	.....	1,189,494	68,451.11	
Big Dixie				.....	.....	.....		.....	.....	.....	264	17.84	
Pelham		Pelham		.....	.....	.....		.....	.....	.....	801,514	46,820.80	
											6,784	285.64	
Farmers Whse.		Statesboro		.....	.....	.....		.....	.....	.....	739,278	49,866.14	
Alliance Whse.				.....	.....	.....		.....	.....	.....	.....	.....	
Planters Whse.				.....	.....	.....		.....	.....	.....	.....	.....	
Savannah Whse.		Valdosta		84,886.90	.....	4,393.07	22	4,000.00	797.99	0	20,886	1,888.39	
				$389,536.67	$.....	$3,430.66†	30	15,425.00	$13,704.70	$17,700.00	2,572,632	177,856.03	$43,399.04

[†Red in copy.]

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PLAINTIFF'S EXHIBIT No. 11 (Continued 3)

1932

					Plant Investment	Funds Used	Profit or Loss† Reported		Salaries Charged	Depreciation Charged	Interest on Investment Charged
B. B. Saunders	Saunders Whse.	Valdosta			$	$	$2,495.54†	1	0	$3,500.00	$
N. B. Smith	Nat. Smiths Whse.	"	Eqpt.		4,000.00		1,000.00†	1	0		
F. W. Brown	Browns Whse.	Nashville					197.15	2	0		
R. E. Lyddane	Waycross Tob. Whse.	Waycross			29,387.25		2,598.80†	4	300.00	1,275.78	0
				1919							
R. A. George	Growers Whse.	Douglas			34,500.00		Loss				
C. B. Strickland		Adel					25.00				
J. M. Easterly							Out				
				1927							
W. W. Bernard		Vidalia			58,000.00		10,110.94†	2	3,000.00	2,500.00	4,000.00
								WEF.			
J. B. Fenner		Baxley					362.74	2	0		
W. B. Clark							Out				
J. P. Bunn							Out				
S. A. McConkey							Out				
L. C. Pruitt	Farmers Whse.	Waycross					100.00	2	0		
			Mother								
Paul Morgan	Big Z Whse.	Blackshear	Owns				1,752.29†	1	0		
W. L. Leath							Out				
				1925		6,000.00					
L. Oettinger					24,200.00	15,000.00	3,869.26†	2	2,000.00	1,800.00?	1,600.00?
W. E. Fenner	Fenners Whse.	Tifton					1,867.17	2	0		
Park Bernard							Out				
				1917				3	0		
J. C. Meadows	Vidalia Tob. Whse.	Vidalia			74,000.00		43.32	2	1,666.67	0	1,106.31
W. F. Boggan							Out				
J. H. McLean											
H. S. Blake	Blakes Whse.						1,150.00†	1	0		
H. W. Winstead	Twin Brick Whse.	Tifton			80,562.52		1,641.29†	0	0	2,034.93	0
W. M. Talley	Union Whse.	Nashville					3,500.00†	3	0		
Forward					$ 304,649.77	$	$25,522.74†	28	6,966.67	$11,110.71	$6,706.31

[†Red in copy.]

[fol. 968]

PLAINTIFFS EXHIBIT No. 11 (Continued 4)

1932—(Concluded)

				Plant Investment	Funds Used	Profit or Loss† Reported	Salaries Charged	Depreciation Charged	Interest on Investment Charged	
Forward				$304,649.77	$	$25,522.74†	28 6,966.67	$11,110.71	$6,706.31	
H. J. Hurdle				14,000.00		Out				
R. A. Hughes	Soapers Tob. Whse	Douglas				1,749.90†	2 0			
R. A. Hughes		Baxley				897.68†	2 0			
			1928							
J. S. Bernard	Red Whse	Douglas		34,500.00		3,781.00†	2 0	1,250.00	2,000.00	
A. W. Jeffreys	Farmers Whse	Tifton		36,386.90		1,581.45†	0 0	797.99	0	
E. E. Bullock	Farmers Whse	Blackshear				0	2 0			
R. M. Sanford	Brantley Brick	Blackshear				220.10†	3 0			
W. C. Spence						Out				
H. P. Foxhall	Cobb & Foxhall	Statesboro				942.16†	2 1,000.00			
C. K. Smith	Farmers	Moultrie				4,000.00†				
W. P. Moore	Growers	Metter				5,700.00†				
P. H. Cannon						Out				
L. E. Knott	Gold Leaf	Hahira				1,150.00†	1 0			
H. A. Easley	Vidalia 1 & 2	Vidalia				Small	3 0			
							1 1,000.00			
J. S. Turner						Out				
E. Y. Wimbish						Out				
J. E. O'Hara						Out				
E. L. Moore						Out				
J. D. Rodgers		Cairo				150.00	1 0			
R. E. Shepperd						Out				
				$389,536.67	$	$45,395.03†	47 8,966.67	$13,158.70	$8,706.31	$14,563.35†

[† Red in copy.]

[fol. 969]

PLAINTIFFS EXHIBIT No. 11 (Continued 5)

1933

			Plant Investment	Funds Used	Profit or Loss† Reported		Salaries Charged	Depreciation Charged	Interest on Investment Charged
B. B. Saunders	Saunders Whse	Valdosta	$.....	$.....	$7,940.74	1	0	$3,500.00	$.....
N. B. Smith	Nat. Smiths Whse	"	Eqpt. 4,000.00	.....	2,000.00	3	0	.....	.....
F. W. Brown	Browns Whse	Nashville	.....	.....	3,446.41	2	0	.....	.....
R. E. Lyddane	Waycross Tob. Whse	Waycross	29,337.25	.....	2,026.06†	4	2,210.00	1,275.78	0
R. A. George	Growers Whse	Douglas	34,500.00	.....	.....		.....	.....	.....
C. B. Strickland		Adel	.....	.....	521.58	1	1,500.00	.....	.....
J. M. Easterly			.....	.....	Out		.....	.....	.....
			1927						
W. W. Bernard		Vidalia	58,000.00	.....	3,741.18†	2	3,000.00	2,375.00	3,800.00
J. B. Fenner		Baxley	.....	.....	2,818.20	3	0	.....	.....
						1	0		
W. B. Clark	Clarks Whse	"	.....	.....	2,776.00	1	500.00	.....	.....
J. P. Bunn			.....	.....	Out		.....	.....	.....
S. A. McConkey			.....	.....	Out		.....	.....	.....
L. C. Pruitt	Farmers Whse	Waycross	.....	.....	600.00	2	0	.....	.....
			Mother						
Paul Morgan	Big Z Whse	Blackshear	Owns	.....	5,765.02	3	0	.....	.....
W. L. Leath			.....	.....	Out		.....	.....	.....
			1925	8,500.00					
L. Oettinger	OK Whse	Douglas	24,200.00	40,000.00	947.37†	3	3,000.00	1,800.00?	1,600.00?
W. E. Fenner	Fenners Whse	Tifton	.....	.....	6,978.41	2	0	.....	.....
Park Bernard			.....	.....	Out		.....	.....	.....
						3	0		
J. C. Meadows	Vidalia Tob. Whse	Vidalia	74,000.00	.....	4,758.91	2	1,500.00	0	2,668.67
W. F. Boggan			.....	.....	Out		.....	.....	.....
J. H. McLean			.....	.....	.....		.....	.....	.....
H. S. Blake			.....	.....	805.52†	1	750.00	.....	.....
H. W. Winsted			80,562.52	.....	8,879.57	0	0	1,989.78	0
W. M. Talley			.....	.....	3,690.00	3	0	.....	.....
Forward			$304,649.77	$.....	$42,654.71	37	12,460.00	$10,940.56	$8,068.67

[† Red in copy.]

[fol. 970]

PLAINTIFFS EXHIBIT No. 11 (Continued 6)

1933—(Concluded)

				Plant Investment	Funds Used	Profit or Loss† Reported		Salaries Charged	Depreciation Charged	Interest on Investment Charged	
Forward				$304,649.77	$.....	$42,654.71	37	12,460.00	$10,940.56	$8,068.67	
H. J. Hurdle				14,000.00	.....	Out		.....	.....	.....	
R. A. Hughes	Soapers Tob. Whse	Douglas		.....	.....	1,626.59	4	0	.....	.....	
R. A. Hughes				.....	.....	Out		.....	.....	.....	
J. S. Bernard	Red Whs7	Douglas	1928	34,500.00	.....	549.43	2	0	1,250.00	2,000.00	
A. W. Jeffreys	Farmers Whse	Tifton	1928	36,386.90	.....	9,641.65	0	0	800.09	0	
E. E. Bullock	" "	Blackshear		.....	.....	6,754.24	2	0	.....	.....	
R. M. Sanford				.....	.....	Out		.....	.....	.....	
W. C. Spence				.....	.....	Out		.....	.....	.....	
H. P. Foxhall	Cobb & Foxhall	Statesboro		.....	.....	476.31	2	1,500.00	.....	.....	
C. K. Smith	Farmers	Moultrie		.....	.....	2,500.00	1	0	.....	.....	
W. P. Moore	Growers	Metter		.....	.....	1,400.00	3	0	.....	.....	
P. H. Cannon				.....	.....	Out		.....	.....	.....	
L. E. Knott				.....	.....	Out		.....	.....	.....	
H. A. Easley				.....	.....	Out		.....	.....	.....	
J. S. Turner				.....	.....	Out		.....	.....	.....	
E. Y. Wimbish				.....	.....	Out		.....	.....	.....	
J. E. O'Hara	Gold Leaf	Hahira		.....	.....	1,500.00†	1	0	.....	.....	
E. L. Moore	Alliance	Valdosta		.....	.....	1,300.00	3	0	.....	.....	
J. D. Rodgers	Big Dixie	Pelham		.....	.....	400.00	1	0	.....	.....	
R. E. Shepperd	Sheppards	Statesboro		.....	.....	1,481.76	1	0	.....	.....	
				$389,536.67	$.....	$67,284.69	57	13,960.00	$12,990.65	$10,068.67	$104,304.01

[† Red in copy.]

[fol. 971]

PLAINTIFFS EXHIBIT No. 11 (Continued 7)

			1934 Plant Investment	Funds Used	Profit or Loss† Reported		Salaries Charged	Depreciation Charged	Interest on Investment Charged
B. B. Saunders	Saunders Whse	Valdosta	$	$	$3,891.20	1	0	$3,500.00	$
N. B. Smith	Nat. Smiths Whse	"	Eqpt. 4,000.00		1,800.00	3	0		
F. W. Brown					Out				
R. E. Lyddane	Waycross Tob. Whse	Waycross	29,387.25		1,641.31†	4	300.00	1,275.78	0
R. A. George	Growers Whse	Douglas	34,500.00		No Record				
C. B. Strickland	Browns Tob. Whse	Nashville			5.08	1	1,500.00		
J. M. Easterly					Out				
			1927						
W. W. Bernard			58,000.00		2,459.09†	2	3,000.00	2,256.25	3,610.00
J. B. Fenner	Farmers Whse	Moultrie			6,588.18	3	0		
W. B. Clark	Clarks Whse	Baxley			650.00†	1	0		
J. P. Bunn					Out				
			1932						
S. A. McConkey	Planters Whse	Hazelhurst	9,000.00		2,292.60	2	0	0	0
L. C. Pruitt	Farmers Whse	Waycross			800.00	2	0		
			Mother				WEF.		
Paul Morgan	Biz Z Whse	Blackshear	Owns		1,504.84	1	0		
W. L. Leath	Leath Whse	Adel			258.46	1	0		
L. Oettinger	OK Whse	Douglas	24,200.00		No Record				
W. E. Fenner	Fenners Whse	Tifton			6,798.25	2	0		
Park Bernard	Cook County Whse				500.00†	2	0		
						3	0		
J. C. Meadows	Vidalia Tob. Whse	Vidalia	74,000.00		2,721.87	2	1,500.00		1,491.60
W. F. Boggan					Out				
J. H. McLean									
H. S. Blake	Blakes Tob. Whse	Moultrie			30.06	5	2,750.00?	0	1,350.00
H. W. Winsted	Twin Brick Whse	Tifton	80,562.52		4,904.99	0	0	1,993.03	0
W. M. Talley	Union Whse	Nashville		20,000.00B/M	5,123.36	2	0		
Forward			$313,649.77	$	$31,468.49	37	9,050.00	$9,025.06	$8,451.60

[† Red in copy.]

[fol. 972]

PLAINTIFFS EXHIBIT No. 11 (Continued 8)

1934

			Plant Investment	Funds Used	Profit or Loss† Reported		Salaries Charged	Depreciation Charged	Interest on Investment Charged	
Forward			$313,649.77	$	$31,468.49	37	9,050.00	$9,025.06	$6,451.60	
H. J. Hurdle	Farmers Independent	Hahira	14,000.00		2,175.00†	1	0	0	0	
R. A. Hughes	Soapers Whse	Douglas			2,077.72	3	0			
R. A. Hughes					Out					
			1928							
J. S. Bernard	Red Whse	Douglas	34,500.00		1,018.58	2	0	1,250.00	2,000.00	
				+O/D						
A. W. Jeffreys	Farmers Whse	Tifton	36,386.90	50,000.00	6,478.71	0	0	801.37	0	
E. E. Bullock	" "	Blackshear			3,760.73	2	0			
			A.P.B. owns				WEF.			
R. M. Sanford	Brantley Brick Whse	"	Gets ½ Profit		Adj. 764.06	1	0			
W. C. Spence					Out					
				5,000.00						
H. P. Foxhall	Cobb & Foxhall	Statesboro		15,000.0	954.14†	2	1,500.00			
C. K. Smith	Central No. 2	Moultrie			3,600.00	1	0			
				10,000.00						
W. P. Moore	Growers Whse	Metter		20,000.0	1,869.83	2	0			
P. H. Cannon					Out					
L. E. Knott					Out					
H. A. Easley	Piedmont Whse	Baxley			1,367.24	2	0			
J. S. Turner	Planters Whse	Nashville			2,814.40	3	0			
E. Y. Wimbish					Out					
J. E. O'Hara	Golf Leaf	Hahira			474.39	2	0			
E. L. Moore	Alliance	Valdosta			2,560.67	2	0			
J. D. Rodgers					2,200.00	1	0			
R. E. Shepperd					1,941.23	1	0			
			$398,536.67	$	$59,239.91	62	10,550.00	$11,076.43	$8,451.60	$89,317.94

[† Red in copy.]

[fol. 973]

PLAINTIFF'S EXHIBIT No. 11 (Continued 9)

1935

			Deposits in Court	Plant Investment	Funds Used	Profit or Loss† Reported		Salaries Charged	Depreciation Charged	Interest on Investment Charged	Tonnage Department of	Value Agriculture
B. B. Saunders	Saunders Whse.	Valdosta	$4,811.93	$	$	$8,834.54	1	0	$3,500.00	$1,072.50	87,628	$14,368.29
N. B. Smith	Natl. Smiths Whse.	"	2,846.83 Eqpt.	4,000.00	40,000.00	5,910.83	3	0			3,033,998	565,347.01
F. W. Brown	Browns Whse.	Nashville	3,261.19			5,008.48	2	0			159,538	26,050.06
R. E. Lyddane	Waycross Tob. Whse.	Waycross	2,111.54	29,387.25		3,526.07	4	3,200.00	1,180.09	0	1,878,810	333,977.35
R. A. George	Growers Whse.	Douglas	2,205.81 1919	34,500.00		4,483.50	2	0			151,636	31,526.23
C. B. Strickland	Independent Whse.	Nashville	4,054.17			7,776.57	2	3,000.00			1,907,482	381,934.82
J. M. Easterly	Farmers Brick Whse.	Douglas	1,838.20			3,522.51	2	0			55,332	11,448.59
W. W. Bernard	Vanns Whse.	Vidalia	4,304.79 1927	58,000.00		5,958.83	2	3,000.00	2,143.43	3,429.50	1,357,392	274,691.74
J. B. Fenner	Farmers Whse.	Moultrie	3,324.52			7,671.14	2 WEF.	0			46,756	9,883.91
W. B. Clark	Clarks Whse.	Baxley	1,966.63			3,057.00					1,823,080	273,414.97
J. P. Bunn	Farmers Whse.	Hazelhurst	2,022.20	6,000.00		3,374.09	1	1,000.00	300.00	1,272.00	129,114	28,751.89
S. A. McConkey	Planters Whse.	"	1,798.94	9,000.00		3,662.21	2	0	0	0	2,241,140	482,752.67
L. C. Pruitt	Farmers Whse.	Waycross	1,362.79			3,077.23	2	0			60,310	9,165.40
Paul Morgan	Big Z Whse.	Blackshear	3,841.61 Mother Owns			10,227.00	1 WEF.	0			1,144,652	175,441.27
W. L. Leath	Leath Whse.	Adel	1,994.64		70,000.00	4,053.11	1	0			69,554	13,086.69
L. Oettinger	OK Whse.	Douglas	2,969.85	24,200.00	9,500.00 55,000.00	3,693.06	2	3,000.00	0	0	3,007,758	483,344.05
W. E. Fenner	Farmers Whse.	Tifton	4,296.98		3,000.00 140,000.00	9,593.89	2	0			34,604	6,499.79
Park Bernard	Cook County Whse.	Adel	2,050.00			3,306.00	2	0			2,279,502	430,183.17
J. C. Meadows	Vidalia Tob. Whse.	Vidalia	4,728.99	74,000.00	74,200.00	13,234.96	4 1	0 1,000.00	0	4,201.97	25,682	5,295.67
W. F. Boggan	Hahira Whse.	Hahira	1,361.25	5,000.00	30,000.00	660.80	0	0	0	0	1,132,056	210,184.93
J. H. McLean											13,814	2,654.66
H. S. Blake	Blakes Tob. Whse.	Moultrie	1,577.94		25,000.00		4	1,750.00			1,329,220	236,932.14
H. W. Winstead	Twin Brick Whse.	Tifton	?†	80,562.52		7,172.28	0	0	1,995.26	0	22,924	4,192.47
W. M. Talley	Union Whse.	Nashville	3,966.25		20,000.00	10,594.61	2	0			1,141,466	219,889.46
Peoples Whse.		Moultrie									86,514	15,529.35
Shepards Whse.		"									1,045,044	203,336.61
Forward			$63,197.05	$324,649.77	$	$128,392.71	45	15,950.00	$9,118.78	$9,975.97	58,546	10,719.00
											2,427,892	471,743.49
											27,630	5,204.87
											1,253,798	261,390.12
											35,604	6,349.74
											1,826,612	334,689.12
											72,120	15,171.07
											2,691,896	531,484.09
											1,275,815	270,281.46
											155,362	25,270.79
											2,801,536	470,463.59
											36,378	7,106.15
											821,142	169,138.14
											110,558	20,032.72
											711,102	150,409.76
											125,006	23,055.92
											2,788,702	558,875.82
											137,725	29,359.94
											2,299,481	476,236.69
											44,972	8,030.94
											1,369,324	255,685.05
											57,904	8,861.06
											1,364,472	277,338.41

[†Red in copy.]

[fol. 974]

PLAINTIFFS EXHIBIT No. 11 (Concluded 10)

1935 (Concluded)

			Deposits in Court	Plant Investment	Funds Used	Profit or Loss† Reported		Salaries Charged	Depreciation Charged	Interest on Investment Charged	Tonnage Department of Agriculture	Value
Forward			$63,197.05	$324,649.77	$.....	$128,392.71	45	$15,950.00	$9,118.78	$9,975.97		
											33,546	$6,610.87
H. J. Hurdle	Farmers Independent	Hahira	1,225.60	14,000.00	60,000.00	2,964.36	1	0	0	0	925,518	181,931.93
											43,820	7,580.22
R. A. Hughes	Soapers Tob. Whse.	Douglas	2,825.35	.....	.....	6,399.86	3	0	.....	.....	1,840,168	321,889.33
R. A. Hughes			.....	.....	.....	Out		.....	.....	.....	.....	.....
					9,150.00						167,060	30,270.91
J. S. Bernard	Red Whse.	Douglas	1,896.28	34,500.00	42,500.00	1,326.90	2	0	1,250.00	?	1,384,066	249,470.01
											199,882	33,584.10
A. W. Jeffreys	Farmers Whse.	Tifton	?	36,386.90	.....	6,315.60	0	0	799.14	0	2,500,730	508,207.58
											116,056	25,604.58
E. E. Bullock	" "	Blackshear	2,892.14	.....	.....	6,261.75	2	0	.....	.....	1,847,586	358,118.45
											45,790	8,713.52
R. M. Sanford	Brantley Brick Whse.	"	2,567.83	.....	.....	2,623.99	1	0	.....	.....	1,646,674	313,751.01
					3,000.00						15,876	2,972.03
W. C. Spence	Pelham Whse.	Pelham	848.91	.....	10,000.00	215.87	2	0	.....	.....	540,394	92,894.17
					5,000.00						12,586	2,005.47
H. P. Foxhall	Cobb & Foxhall	Statesboro	1,502.59	.....	15,000.00	3,236.13	2	1,500.00	.....	.....	1,241,680	218,069.31
											39,018	7,427.36
C. K. Smith	Central #1 & #2	Moultrie	4,455.41	.....	125,000.00	5,202.19	2	2,000.00	.....	.....	2,473,784	484,829.99
					10,000.00						26,680	4,583.81
W. P. Moore	Growers Whse.	Metter	1,370.95	.....	20,000.00	3,381.41	2	0	.....	.....	910,868	153,006.68
					10,500.00						37,598	5,242.93
P. H. Cannon	Metter Whse.	"	1,258.33	.....	15,000.00	3,222.64	2	7.18	.....	.....	747,344	126,128.58
					20,000.00						24,572	4,272.78
L. E. Knott	Savannah Whse.	Valdosta	3,171.10	.....	40,000.00	7,109.78	1	0	.....	.....	2,006,986	359,057.66
					5,000.00						40,018	7,929.01
H. A. Easley		Baxley	2,006.28	O-D	2,500.00	4,758.50	3	0	.....	.....	1,156,102	210,990.65
					10,000.00						85,586	16,766.44
J. S. Turner	Banner Whse.	Tifton	3,558.31	42,533.00	50,000.00	6,715.43	2	0	3,541.00	0	2,175,592	419,736.63
					8,300.00						12,994	2,890.42
E. Y. Wimbish	Planters Whse.	Baxley	1,106.35	O-D	.....	2,284.04	2	0	.....	.....	699,040	121,038.48
											58,230	11,710.46
J. E. O'Hara	Gold Leaf Whse.	Hahira	1,450.00	.....	25,000.00	3,050.00	2	0	.....	.....	1,001,638	208,307.36
					5,000.00						135,910	19,337.01
E. L. Moore	Alliance	Valdosta	1,800.00	.....	30,000.00	2,841.68	1	0	.....	.....	962,558	170,397.49
											8,010	1,280.66
J. D. Rodgers	Big Dixie	Pelham	2,145.95	.....	70,000.00	5,994.07	1	0	.....	.....	1,351,718	235,043.14
					5,000.00						19,288	3,488.60
R. E. Shepperd	Shepperds Whse.	Statesboro	.....	.....	40,000.00	.....		.....	.....	.....	1,880,484	340,878.43
			$99,278.43	$452,069.67	$.....	$202,296.91	76	$19,457.18	$14,708.92	$9,975.97		
												$246,438.98

[†Red in copy.]

PLAINTIFF'S EXHIBIT NO. 12 (Continued 1)

	Tonnage Dep. of Ag.	Value Dep. of Ag.	Total Commission	2½% Commission	Weighing & Selling Commission	Statutory Reduction in Weighing & Selling Commission
B. B. Saunders		$	$	$	$	$
N. B. Smith						
F. W. Brown	2,059,118	413,461.05	18,638.61	10,336.53	8,302.08	3,261.19
R. E. Lyddane	1,412,724	286,140.33	13,956.03	7,153.50	6,802.53	2,111.54
R. A. George	1,569,836	283,298.88	14,446.41	7,082.47	7,363.94	2,205.81
C. B. Strickland	2,370,254	511,504.56	23,404.70	12,787.62	10,617.08	4,054.17
J. M. Easterly	1,204,962	184,606.67	11,203.15	4,615.16	6,587.99	1,838.20
W. W. Bernard						
J. B. Fenner	2,214,106	436,682.96	21,190.68	10,917.03	10,273.65	3,324.52
W. B. Clark						
J. P. Bunn	1,343,034	239,586.80	12,150.25	5,989.66	6,160.59	2,022.20
S. A. McConkey						
L. C. Pruitt	1,131,558	218,865.96	11,092.89	5,471.64	5,621.25	1,862.79
Paul Morgan	2,486,438	482,462.49	23,657.93	12,061.55	11,596.38	3,841.61
W. L. Leath	1,281,428	266,594.99	12,502.52	6,664.87	5,837.65	1,994.64
L. Oettinger	1,862,216	341,038.86	17,246.48	8,525.97	8,720.51	2,969.85
W. E. Fenner						
Park Bernard						
J. C. Meadows						
W. F. Boggan	857,520	176,244.29	8,351.50	4,406.11	3,945.39	1,361.25
J. H. McLean						
H. S. Blake						
H. W. Winsted						
W. M. Talley	2,437,206	505,596.63	22,980.77	12,639.92	10,340.85	3,966.25
Forward	22,230,400	$4,346,084.47	$210,821.92	$108,652.03	$102,169.89	$34,814.02

[fol. 976]

PLAINTIFFS EXHIBIT No. 12 (Continued 2)

	Tonnage Dep. of Ag.	Value Dep. of Ag.	Total Commission	2½% Commission	Weighing & Selling Commission	Statutory Reduction in Weighing & Selling Commission
Forward	22,230,400	$4,346,084.47	$210,821.92	$108,652.03	$102,169.89	$34,814.02
H. J. Hurdle	1,883,998	329,469.55	17,315.73	8,236.74	9,078.99	2,825.35
R. A. Hughes	1,551,126	279,740.92	13,954.37	6,993.52	6,960.85	1,896.28
R. A. Hughes						
J. S. Bernard	1,963,642	383,723.03	18,629.30	9,593.07	9,036.23	2,892.14
A. W. Jeffreys	1,692,464	322,464.53	13,243.45	8,061.61	5,181.84	2,567.83
E. E. Bullock						
R. M. Sanford	1,254,266	220,074.78	11,757.79	5,501.87	6,255.92	1,502.59
W. C. Spence	2,512,802	492,257.35	23,698.22	12,306.43	11,391.79	4,455.41
H. P. Foxhall	937,548	157,590.49	8,255.79	3,939.76	4,316.03	1,370.95
C. K. Smith	784,942	131,371.51	7,193.57	3,284.29	3,909.28	1,258.33
W. P. Moore						
P. H. Cannon	1,196,120	218,919.66	11,410.78	5,472.99	5,937.79	2,006.28
L. E. Knott	2,261,178	436,503.07	21,148.26	10,912.57	10,235.69	3,558.31
H. A. Easley	712,034	123,928.90	6,580.54	3,098.22	3,482.32	1,106.35
J. S. Turner						
E. Y. Wimbish	1,098,468	189,734.50	8,900.26	4,743.36	4,156.90	1,800.00
J. E. O'Hara	1,359,728	236,323.80	12,286.76	5,908.09	6,378.67	2,145.95
E. L. Moore						
J. D. Rodgers						
R. E. Shepperd						
	41,438,706	$7,868,186.56	$385,196.74	$196,704.55	$188,492.19	$64,199.79

Reduction 1.54927 M #

[fol. 977]

PLAINTIFFS EXHIBIT No. 13

	Profit or Loss Reported	Salaries Charged	Depreciation Charged	Interest On Plant Investment Charged	Net Income Before Any Provision For Personal Service or Depreciation or Use Of Plant	Statutory Reduction	Net Income Before Provisions Under Statute
1931	$3,430.66†	$15,425.00	$13,704.70	$17,700.00	$43,399.04	$97,721.86	$54,322.82†
1932	45,395.03†	8,966.67	13,158.70	8,706.31	14,563.35†	18,856.44	33,419.79†
1933	67,284.69	13,960.00	12,990.65	10,068.67	104,304.01	96,948.69	7,355.32
1934	59,239.91	10,550.00	11,076.43	8,451.60	89,317.94	54,597.07	34,720.87
1935	202,296.91	19,457.18	14,708.92	9,975.97	246,438.98	115,814.36	130,624.62
	$279,995.82	$68,358.85	$65,639.40	$54,902.55	$468,896.62	$383,938.42	$84,958.20

[fol. 978]

PLAINTIFFS EXHIBIT No. 14

	Tonnage Dep. of Ag.	Value Dep. of Ag.	Lower - 2½% Of Value Upper - Weighing And Auction Fee	Total Fees	Amount Of Reduction In Fees By Statute	Percentage Of Reduction In Fees By Statute
1931	63,076,066	$4,090,630.84	$286,913.47 102,265.77	$389,179.24	$97,721.86	25%
1932	12,171,179	1,267,019.73	55,362.92 31,675.99	87,038.91	18,856.44	21
1933	62,577,015	7,107,217.63	284,643.44 177,680.44	462,323.88	96,948.69	21
1934	35,240,514	6,611,855.10	160,298.17 165,296.33	325,594.55	54,597.07	17
1935	74,754,083	14,122,799.09	331,034.15 353,069.98	684,104.13	115,814.36	17
				$1,928,240.71	$383,938.42	20%

[† Red in copy]

[fol. 979]

PLAINTIFF'S EXHIBIT No. 15

1935	71,826,352	$13,582,912.71	Reduction to 14.90 would reduce Comm.		$71,826.35
1934	33,623,474	6,299,761.96			
1933	59,853,963	6,784,125.31			
1932	12,171,179	1,267,019.73			
1931	60,881,696	3,901,841.56			
1930	106,483,019	10,501,228.53	$3,448,396.83	$42,316,889.90	12.27
1929	90,743,520	16,669,584.62			
1928	85,727,172	10,955,982.58			
1927	60,196,288	11,387,137.69			
1926	40,258,914	9,493,051.92			
1925	49,565,841	7,122,611.35			
1924	30,024,502	6,551,346.34	7,013,559.20	104,496,554.40	14.90
1923	9,101,543	2,339,096.55			
1922	3,200,665	763,358.60			
1921	7,896,000	1,974,000.00			
1920	13,200,000	4,884,000.00			
1919	16,430,000	3,532,450.00			
1918	2,668,000	1,227,280.00			
1917	1,600,000	912,000.00			
	755,452,128	$120,128,739.55			15.90

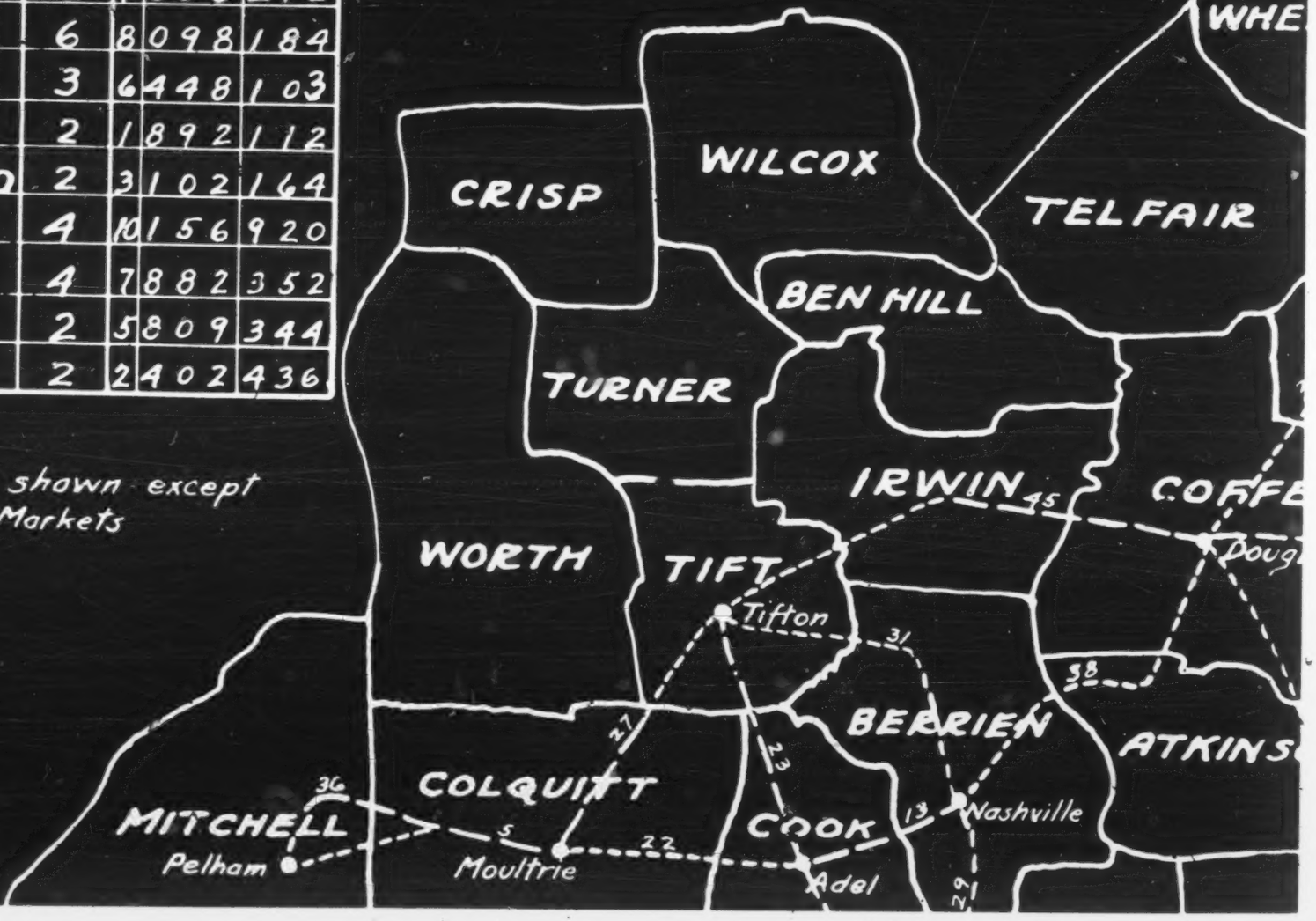
(Here follows 1 map folio 980)

MARKET	No Houses	No Of Pounds		
ADEL	2	2	5 2 9	6 1 3
BAXLEY	3	2	9 8 7	1 9 8
BLACKSHEAR	3	5	9 2 2	1 5 2
DOUGLAS	5	7	7 1 8	5 7 8
HAHIRA	3	2	7 4 8	2 9 8
HAZLEHURST	2	2	4 7 0	6 8 6
METTER	2	1	6 5 8	2 1 2
MOULTRIE	6	8	0 9 8	1 8 4
NASHVILLE	3	6	4 4 8	1 0 3
PELHAM	2	1	8 9 2	1 1 2
STATESBORO	2	3	1 0 2	1 6 4
TIFTON	4	10	1 5 6	9 2 0
VALDOSTA	4	7	8 8 2	3 5 2
VIDALIA	2	5	8 0 9	3 4 4
WAYCROSS	2	2	4 0 2	4 3 6

NOTE—
No towns are shown except Those containing Markets

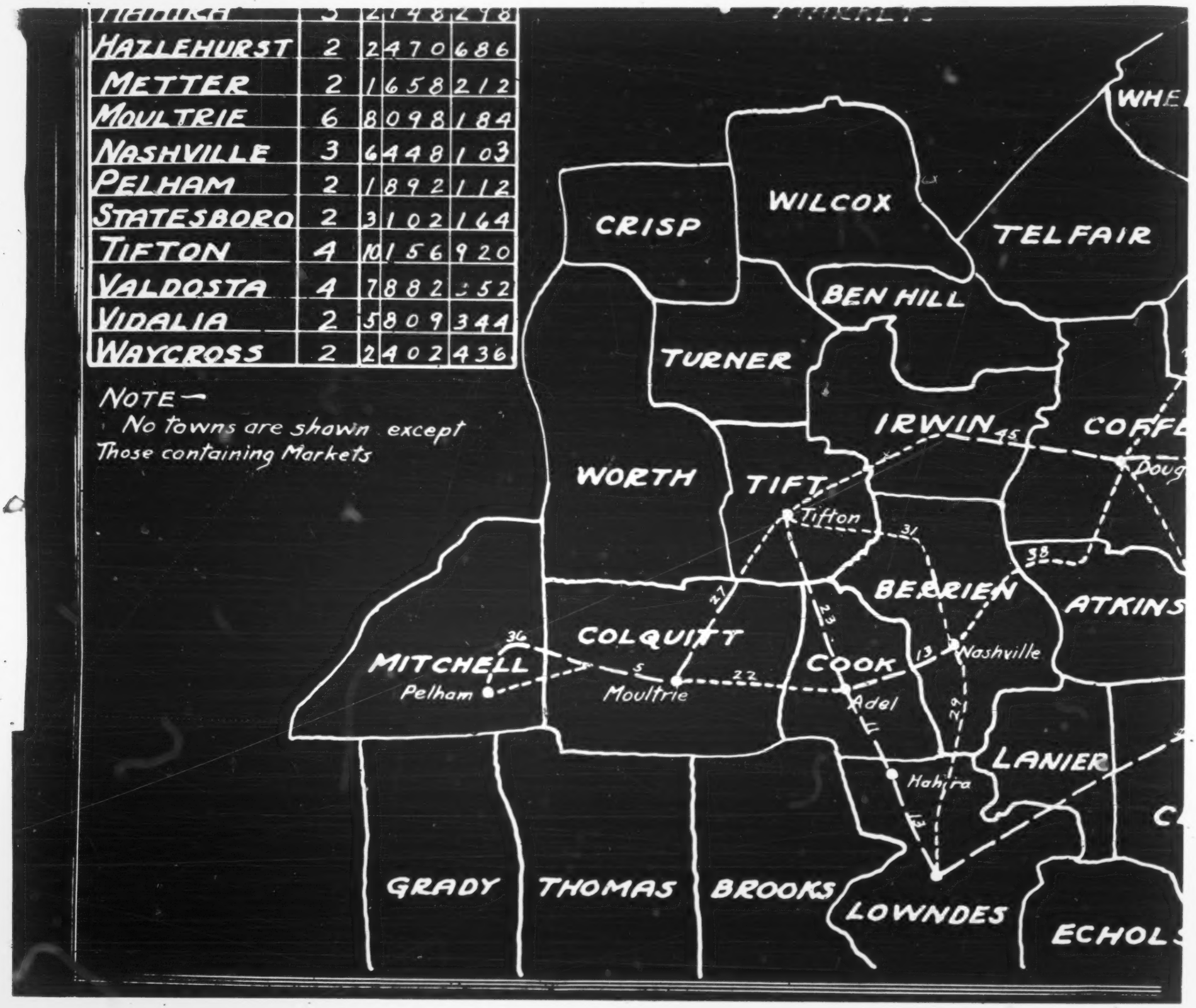
PAVED ROADS
UNPAVED ROADS
COUNTY LINES
31-17-27- DISTANCES BETWEEN MARKETS.
• MARKETS

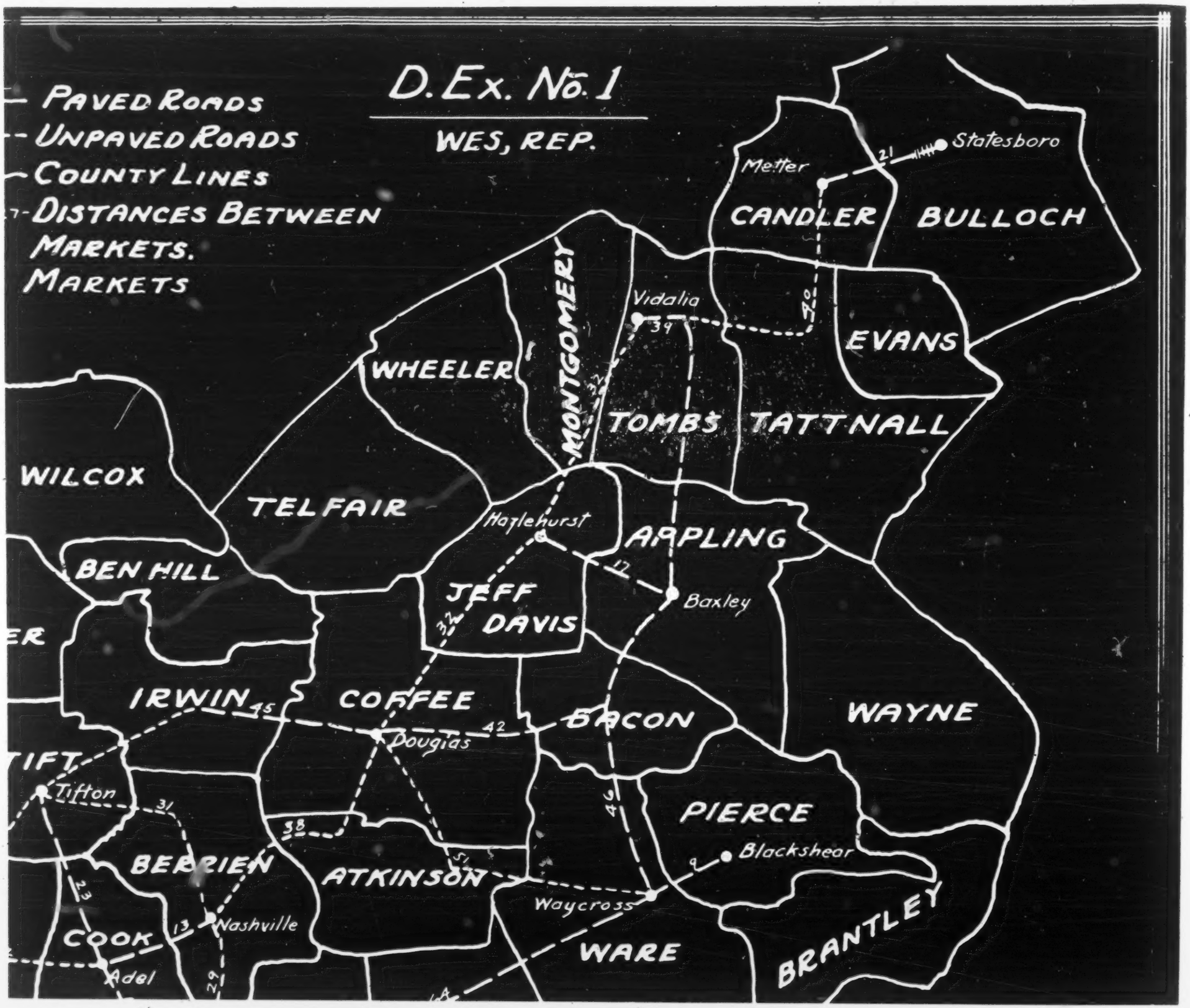
D.

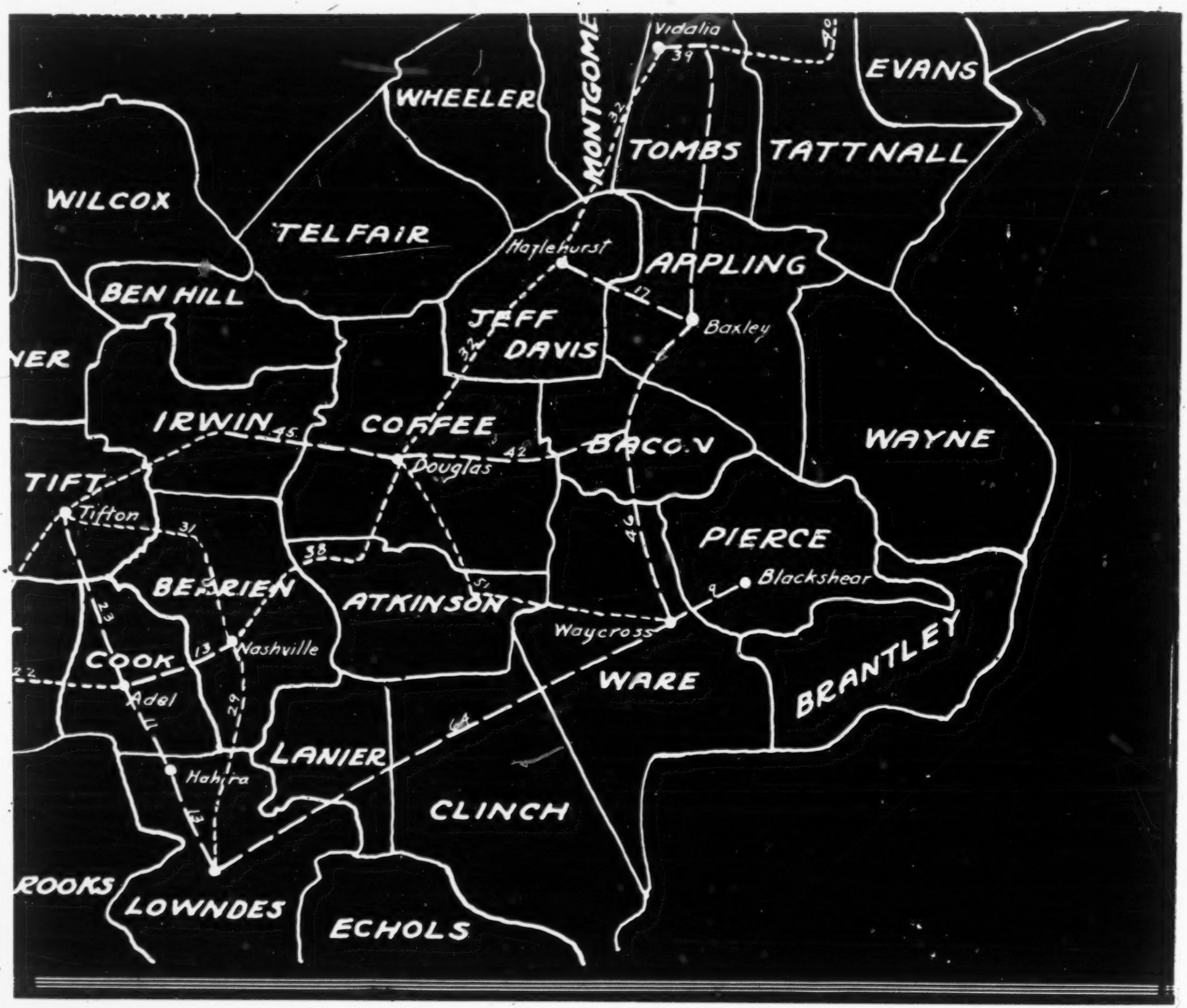


[illegible]	3	2	1	4 8	2 8
HAZLEHURST	2	2	4	7 0	6 8 6
METTER	2	1	6	5 8	2 1 2
MOULTRIE	6	8	0	9 8	1 8 4
NASHVILLE	3	6	4	4 8	1 0 3
PELHAM	2	1	8	9 2	1 1 2
STATESBORO	2	3	1	0 2	1 6 4
TIFTON	4	10	1	5 6	9 2 0
VALDOSTA	4	7	8	8 2	3 5 2
VIDALIA	2	5	8	0 9	3 4 4
WAYCROSS	2	2	4	0 2	4 3 6

NOTE —
No towns are shown except
Those containing Markets




D. Ex. No. 1
WES, REP.
PAVED ROADS
UNPAVED ROADS
COUNTY LINES
DISTANCES BETWEEN MARKETS.
MARKETS
Statesboro
Metter
21
CANDLER
BULLOCH
Vidalia
39
70
EVANS
MONTGOMERY
WHEELER
32
TOOMBS
TATTNALL
WILCOX
TELFAIR
Hazlehurst
APPLING
BEN HILL
JEFF DAVIS
17
Baxley
32
IRWIN
45
COFFEE
Douglas
42
BACON
WAYNE
TIFT
Tifton
31
38
PIERCE
Blacksheer
46
BERRIEN
ATKINSON
51
Waycross
23
13
Nashville
COOK
Adel
29
WARE
BRANTLEY


Vidalia
EVANS
WHEELER
MONTGOME
TOMBS
TATTNALL
WILCOX
TELFAIR
Hazlehurst
ARPLING
BEN HILL
JEFF DAVIS
Baxley
IRWIN
COFFEE
BACON
WAYNE
Douglas
TIFT
Tifton
PIERCE
Blackshear
BERRIEN
ATKINSON
Waycross
COOK
Nashville
WARE
BRANTLEY
Adel
LANIER
Hahira
CLINCH
ROOKS
LOWNDES
ECHOLS

[fol. 981] STIPULATION AS TO STATEMENT OF EVIDENCE

It is stipulated between counsel for all parties that the foregoing pages, numbered from 1 to 766, inclusive, constitute the narrative of all of the oral testimony and documentary evidence necessary for a review of the questions presented by this appeal, and consent is hereby given that the same be approved by the Court.

This February —, 1937.

J. O. Gibson, E. Kontz Bennett, E. K. Wilcox, Robt. C. Alston, W. Hart Sibley, Attorneys for Appellants. M. J. Yeomans, Attorney General; O. H. Dukes, Asst. Attorney General; L. W. Branch, W. D. Dickerson, E. D. Rivers, Attorneys for Appellees.

[fol. 982] IN UNITED STATES DISTRICT COURT

ORDER APPROVING BRIEF OF EVIDENCE

It is considered, ordered and adjudged that the within and foregoing pages, numbered 1 to 766, inclusive, be and the same are hereby approved as the narrative of the oral testimony and documentary evidence in this cause, and the same is ordered filed as a part of the record.

This February 26, 1937.

E. R. Holmes, U. S. Circuit Judge. Wm. H. Barrett, U. S. District Judge. Bascom S. Deaver, U. S. District Judge.

[File endorsement omitted.]

[fol. 983] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed March 3, 1937

The Clerk of this Court is hereby directed to copy and certify the following portions of the original record in the above entitled cause, for the use of the Supreme Court of the United States on this appeal, to-wit:

1. The original bill of complaint, filed July 25, 1935;
2. Motion of complainants for temporary restraining order, filed July 25, 1935;
3. Notice to Governor and Attorney General of Georgia and acknowledgment of service thereon, filed July 25, 1935;
4. Order of District Judge Bascom S. Deaver, temporarily restraining respondents, filed July 27, 1935;
5. Joint and several answer of all the defendants, filed the — day of August, 1935;
6. Order organizing three-Judge court, filed August 31, 1935;
7. First amendment to the original bill of complainants, allowed and filed August 29, 1935;
8. Joint and several supplemental answers to the amended bill of complaint, filed August —, 1935;
[fol. 984] 9. Second amendment to the original bill of complainants, allowed and filed January 20, 1936;
10. Joint and several supplemental answer to the amendment proposed by complainants and allowed by the Court subject to objection on the 20th day of January, 1936, and filed the 28th day of January, 1936.
11. Order appointing J. N. Talley as Examiner, filed September 5, 1935;
12. Order continuing temporary restraining order in force and effect, filed October 25, 1935;
13. Certificate of J. N. Talley, Examiner, filed January 23, 1936;
14. Order appointing Special Master, filed February 1, 1936;
15. Order amending and substituting Judge Holmes for Judge Walker, filed June 19, 1936;
16. Motion of complainants and order continuing restraining order of July 27, 1935, filed July 17, 1936;
17. Intervention of Lawrence M. Russell and Frank Wallace and order thereon, filed July 17, 1936;
18. Intervention of Alverson-Phillips Warehouse Company and order thereon, filed July 17, 1936;
19. Motion of defendants and order revoking reference to J. N. Talley, Special Master, filed July 17, 1936;
20. Opinion, findings of fact, and conclusions of the Court, and dissenting opinion of Judge Bascom S. Deaver, filed October 19, 1936;
21. Final decree, entered and filed November 27, 1936;
22. Notice of intention to appeal, filed December 12, 1936;

23. Petition for appeal, assignment of errors and prayer for reversal, filed December 12, 1936;

[fol. 985] 24. Order allowing appeal, entered and filed December 12, 1936;

25. Appeal and supersedeas bond, approved, entered and filed December 14, 1936;

26. Statement as to jurisdiction, acknowledgment of service in accordance with Rule 12 of the Supreme Court of the United States, filed December 12, 1936;

27. Citation with acknowledgment of service thereon, filed December 12, 1936;

28. Motion for injunction pending appeal, acknowledgment of service and consent thereon, and order granting injunction, filed December 12, 1936;

29. Motions for extension of time to perfect record and orders thereon, filed December 12, 1936, and February —, 1937.

30. Notice of allowance of appeal, filed December 12, 1936.

31. Narrative statement of the oral evidence, documentary evidence, and stipulation of counsel of record as to the evidence in this cause, approved and filed the 3 day of March, 1937.

32. This Præcipe, all acknowledgments and receipts of copies, acknowledgments of service and waivers signed by Attorneys of record in this cause. This 3rd day of March, 1937.

J. O. Gibson, E. Kontz Bennett, E. K. Wilcox, Robt. C. Alston, W. Hart Sibley, Solicitors for Appellants. Wilcox, Connell & Wilcox, Bennett & Bennett, Alston, Alston, Foster & Moise, of Counsel.

[fol. 986] Service of the within and foregoing Præcipe acknowledged; copy received; all other and further service or notice hereby waived.

This 3rd day of March, 1937.

M. J. Yeomans, O. H. Dukes, W. D. Dickerson, E. D. Rivers, Lee W. Branch, Solicitors for Appellees.

[File endorsement omitted.]

[fol. 987] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 988] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON—Filed March 8, 1937

Come now the Appellants in the above entitled cause, and state that the points upon which they, jointly and severally, intend to rely in this Court in this case are as follows:

Point 1. That the statute of the State of Georgia, fixing the maximum charges for tobacco warehousemen, here under attack, is void for that there is no power in the Legislature of the State of Georgia to enact such a statute.

(a) The business of tobacco warehousing as conducted in the State of Georgia is an instrumentality of interstate and foreign commerce. The sales and purchases of the tobacco as carried on in said warehouses, and as shown by the undisputed evidence in this case, were made in the process of transfer of the tobacco from Georgia to other States and foreign countries, and in fact are intercourse in interstate and foreign commerce. The effect of the Statute contravenes Article I, Section 8, Paragraph 3 of the Constitution of the United States in that the Congress has exclusive power to regulate this commerce. See Assignments of Error 1, 9 and 10.

(b) The police power of the State of Georgia does not [fol. 989] extend to the tobacco warehouse business to the extent of regulating the maximum charges to be made for the service rendered by the warehousemen to the growers.

See Assignments of Error, Numbers 1 to 10, inclusive.

Point 2. The decree of the statutory District Court is based upon findings of fact which disregard undisputed evidence in the record, and has findings which are contrary to the evidence in the record and without evidence to support them, in that—

(a) The District Court found that the scale of charges prescribed by the statute had been in effect in Georgia prior to 1927 throughout the tobacco producing counties. By inference the Court found that in 1927 the charges were raised to the uniform scale in effect in 1935, which finding is not supported by the evidence in the record.

See Assignment of Error No. 2.

(b) The District Court found that the warehousemen control the sale of tobacco in Georgia, and unless regulated by law have it in their power to unduly coerce the growers to market their tobacco at prices fixed by the warehousemen for services rendered the growers, and that the warehousemen have a virtual monopoly, which findings are without evidence in the record to support them and are contrary to the evidence in the record. As a matter of law, monopoly cannot exist where exclusive operation is not present. The evidence shows and it is not denied, that any person may engage in the business.

See Assignments of Error numbers 3 and 6.

(c) The record clearly establishes that the operating conditions in Georgia under which the tobacco warehousing [fol. 990] business is carried on are entirely different and entail greater cost than the operations carried on by warehousemen in the States of North Carolina, South Carolina and other States. The fact that statutes regulating warehouse charges have been passed in other states has no relevancy to the issues of this case, as no attack has been made on their validity.

See Assignment of Error No. 4.

(d) The District Court overlooked the testimony of each of the witnesses for the complainants, to the effect that they deposited in the registry of the Court, under the terms of the preliminary injunction, large sums of money as the difference between the legislative scale of charges and the scale theretofore charged, which of necessity is a loss "in revenue" to the warehousemen in the event the statute under attack is upheld. See Finding of Fact No. 19 which is contrary to Finding No. 12. The record in this case plainly showed, without contradiction, that the expenses of the warehousing business in Georgia were reasonable, necessary and customary expenses, and there is no evidence of any extravagance or waste in the operation of the business. For instance, the Court in its findings assumed that ill-advised loans, excessive competition and unnecessary expense in buying influence or hauling customers' tobacco were the cause of the reduction of the revenue of the warehousemen rather than the scale of charges prescribed by

the Legislature of the State. To make the position of complainants perfectly clear, the Court must bear in mind that there were forty-five warehouses in the tobacco belt in Georgia in the year 1935. The exhibits incorporated in the narrative of the oral testimony and documentary evidence disclose the fact that only five of the forty-five warehouses [fol. 991] sustained losses by ill-advised loans in 1935. The largest of these was $1164.95, the next largest was $658.00, and the total of all others amounted to less than $125.00. The expense incident to the solicitation of business was shown by the evidence without conflict to be customary expense. It appeared from the evidence, without conflict, that the custom of hauling tobacco from the farms of the growers to the tobacco warehouses has long since been discontinued.

See Assignment of Error No. 5.

(e) The finding of the District Court to the effect that it is not proven that each or any of the warehousemen lost in revenue, or that the loss, if any, was not caused by other causes than the reduction in charges, and that it is not proven that all of the losses are traceable to the reduction in charges, imposes as a matter of law an excessive and undue burden of proof on complainants. The evidence plainly shows that all expenses were reasonable, necessary and customary in a business of this sort, and there is no conflict in this evidence. There is no evidence offered by the defendants that the charges heretofore in effect were exorbitant, oppressive or fraudulent, or that the charges exacted were unreasonable, arbitrary or capricious. The burden of proof imposed by the lower court would make each separate warehouse prove a loss in its operation by reason of the reduction in the charges before complainants would be entitled to any of the relief prayed for.

See Assignment of Error No. 5.

(f) The District Court found that the business of the tobacco warehouseman as conducted in Georgia in the year 1935, and for some years prior thereto, was a business affected with a public interest and clothed with a public use. There is no evidence in the record to sustain this finding. [fol. 992] There is no evidence that tobacco warehousing affects the public health, the public morals or the general welfare, but on the contrary the evidence plainly shows that

the tobacco warehousemen in Georgia number less than one hundred individuals or corporations; that the tobacco growers are confined to twenty odd counties in the southern part of Georgia, and the growing of tobacco is a business just as the warehousing of tobacco is a business. The effect of the statute on the business of the warehousemen is to take from their earnings money and give it to the growers of tobacco, or to state it otherwise, to regulate one business for the benefit of another.

See Assignment of Error No. 7.

(g) The finding that the legislative scale of charges is not reasonable, arbitrary and capricious, but on the contrary is reasonably adapted to accomplish the desired result, is an ultimate finding, unsupported by any evidence in the record and without basic and fundamental findings of fact sufficient to sustain it. There is no evidence to show what the desired result was, and the evidence plainly shows that the means adopted are inappropriate to accomplish any fixed or conceivable desired result.

See Assignment of Error No. 8.

Point 3. The decree of the District Court upholding the enforcement of the statute under attack would deprive each and all of the complainants of their respective properties, including the right to earn a reasonable return on their investments and the value of their services rendered to the growers, without due process of law, contrary to the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States.

See Assignment of Error No. 8.

[fol. 993] Point 4. Assuming for the sake of this point that the tobacco warehouse business is affected with a public interest and clothed with a public use, and that the police power of the State is properly invoked, yet nevertheless the provisions of this particular statute are unreasonable, arbitrary and capricious and the statute under attack therefore contravenes the provisions of the 14th Amendment of the Constitution of the United States.

(a) The evidence in the record clearly shows that the operating conditions in Georgia are different from those in any other tobacco producing State.

(b) The scale of charges in effect in other tobacco producing areas in the United States vary according to operating conditions in the respective States. The scale of charges prescribed by the statute is as low as the scale in any tobacco producing State.

(c) The marketing conditions in Georgia are unique in that the tobacco is placed on the floors of the various warehouses in baskets and offered for sale "loose-leaf", whereas in other States it is by requirement of statutes or by custom offered for sale tied and bundled. The cost of marketing tobacco in other States, tied and bundled, as required by statute or custom, is, according to the undisputed evidence in this case, much less burdensome upon warehousemen. The sales when offered "loose-leaf" in baskets, as marketed in Georgia, materially increases the operating expenses of the warehousemen. Tobacco marketed "loose-leaf" enables the grower to flood the markets and overtax the capacity of the existing warehouses to the extent of requiring twenty-four hour daily operation. The "rush" of the tobacco season in Georgia is caused, according to the [fol. 994] undisputed evidence, by this and other conditions. The short selling season, the end of which is fixed after investigation and a determination that all tobacco grown in Georgia has been or may within a very limited time be sold, is the logical result of such a practice.

(d) The undisputed evidence shows that the reduction in the gross income of each warehouseman caused by the statutory scale of charges amounts to as much as 20%. The reduction in the net income of some individual warehousemen is as much as 100%.

(e) The income of a warehouseman depends upon the volume of tobacco sold and the price it brings. The evidence shows without conflict that the production in Georgia has fluctuated from twelve million to one hundred six million pounds per year. The average price per year fluctuates from 6.41¢ per pound to 18.91¢ per pound. In view of such fluctuation in poundage and price, it should be determined as matter of law that the rates or charges fixed by the statute under attack are not sufficient to yield an adequate return on the investments of the warehousemen and the services rendered by them to the growers.

(f) The statute under attack fixes and prescribes a hard and inflexible scale of rates and charges, without regard to fluctuations in poundage or prices, which, as stated, de-

termines the earnings of the warehousemen, and yet no provision is made therein or elsewhere in the statutes of the State for any appeal by the warehousemen or the growers to any regulatory body for relief in case the rates and charges fixed should not yield a reasonable return or should yield more than a reasonable return. For this additional reason the rates and charges fixed by the statute under attack are unreasonable, arbitrary and capricious.

[fol. 995] (g) The Act of the General Assembly under attack utterly fails to provide for any judicial review as to the reasonableness of the rates and charges heretofore exacted by the complainants as warehousemen for services rendered to the growers in the marketing of the tobacco grown by them, and it is therefore unreasonable, arbitrary and capricious.

See Assignments of Error Nos. 1 to 8, inclusive.

Point 5. The findings of fact made by the District Court in its opinion filed October 19, 1936, did not justify and do not sustain the decree herein appealed from.

See Assignments of Error Nos. 1 to 10, inclusive.

DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR CONSIDERATION OF THE POINTS TO BE RELIED ON

And the appellants further state that the entire record as set forth in the Præcipe is necessary for the consideration of the points above specified and that the whole of the record as filed in this Court must be printed for the consideration of the cause.

Respectfully submitted, J. O. Gibson, E. Kontz Bennett, E. K. Wilcox, Robt. C. Alston, W. Hart Sibley, Attorneys for Appellants. Bennett & Bennett, Wilcox, Connell & Wilcox, Alston, Alston, Foster & Moise, of Counsel.

[fol. 996] Service of the above and foregoing Statement of Points and Designation of the Record is hereby acknowledged, copy received, all other and further service or notice is hereby waived.

This 8 day of March, 1937.

M. J. Yeomans, O. H. Dukes, W. D. Dickerson, E. D. Rivers, Lee W. Branch, Attorneys for Appellees.

[fol. 997] [File endorsement omitted.]

Endorsed on cover: Enter Robert C. Alston. File No. 41,321. M. Georgia, D. C. U. S. Term No. 781. C. R. Townsend and Park Bernard, a partnership known as Townsend & Bernard, doing business as Cook County Warehouse, appellants, vs. M. J. Yeomans, Attorney General of the State of Georgia, et al. Filed March 5, 1937. Term No. 781, O. T., 1936.

MAR 5 19
CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 781

C. R. TOWNSEND AND PARK BERNARD, A PARTNERSHIP KNOWN AS TOWNSEND & BERNARD, DOING BUSINESS AS COOK COUNTY WAREHOUSE, ET AL.,

Appellant,

versus

M. J. YEOMANS, ATTORNEY GENERAL FOR THE STATE OF GEORGIA, ET AL.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA.

STATEMENT AS TO JURISDICTION.

J. O. GIBSON,
E. K. WILCOX,
E. KONTZ BENNETT,
WM. HART SIBLEY,
ROBERT C. ALSTON,
Solicitors for Appellants.

WILCOX, CONNELL & WILCOX,
BENNETT & BENNETT,
ALSTON, ALSTON, FOSTER & MOISE,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 781

C. R. TOWNSEND AND PARK BERNARD, A PARTNERSHIP KNOWN AS TOWNSEND & BERNARD, DOING BUSINESS AS COOK COUNTY WAREHOUSE, ET AL.,

Appellant,

versus

M. J. YEOMANS, ATTORNEY GENERAL FOR THE STATE OF GEORGIA, ET AL.,

Appellees.

STATEMENT BY APPELLANTS OF THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW UPON APPEAL THE ABOVE-ENTITLED CAUSE.

(a) The Statutory Provisions Sustaining the Jurisdiction.

Appellants rely upon Section 238 of the Judicial Code, as amended by the Act of Congress of February 13, 1925 (Chapter 229, 43 Stat. 938, 28 U. S. C. A. 345), and also Section 266 of the Judicial Code, as amended by Act of Congress of February 13, 1925 (Chapter 229, 43 Stat. 938, 28

U. S. C. A. 380), as sustaining the jurisdiction of the Supreme Court of the United States to review the above entitled cause upon appeal.

(b) **The Decree Sought to be Reviewed.**

The decree appealed from is dated November 27, 1936, entered and filed of record November 27, 1936. The petition for appeal is presented December 12, 1936.

(c) **Nature of the Case and of the Rulings of the Court.**

The original bill in this cause was filed for the purpose of enjoining State officers in the enforcement of, and to set aside and annul a statute of the State of Georgia passed by the General Assembly of that State on March 28, 1935, which statute, among other things, fixed the maximum charges that tobacco warehousemen operating in the State of Georgia might charge for their services and facilities and fixed a scale of such maximum charges, as more fully appears in said statute. Copy of the statute is hereto attached as Appendix A.

The bill was filed for the purpose of attacking and setting aside said statute on the grounds that it violated the provisions of the Constitution of the United States, particularly the due process clause of the Fourteenth Amendment to the Constitution and the commerce clause, Article I, Section 8, Paragraph 3 thereof.

The bill was filed July 25, 1935, by complainants as warehousemen affected by the statute and as operators who owned or rented tobacco warehouses in the State of Georgia and who carried on the business of tobacco warehousemen, as defined in the statute in said State, during the 1935 selling season. By amendment those who operated for the 1936 season were joined as complainants. The respondents named were the law enforcing officers of the State of Georgia, being the Attorney General for Georgia, all Solicitors

of the City Courts, Solicitors General of the Judicial Circuits, and Sheriffs of the various counties in which warehouses of complainants were located. Some of the officials were also named respondents as individuals who grew tobacco and were members of the class of growers.

All respondents appeared and filed defensive pleadings.

The record shows that tobacco culture was a recent undertaking in the State of Georgia, barely now out of the experimental stage; that the only type grown was bright leaf, flue cured tobacco and it was used only in cigarette manufacture. The evidence showed without contradiction that no manufactory using this tobacco was operated in the State of Georgia and all tobacco grown there was transported in interstate and foreign commerce. The movement in such commerce begins so soon as the grower places his tobacco on the warehouse floor for sale. The appellants operate these warehouses not as storage places but as market places. Each must have a corps of employees, including auctioneers, bookkeepers, clip-men, book-men, and other skilled and unskilled help. Appellants, in most instances, and most of their skilled help, are non-residents, coming from the regions where growth, culture and marketing of tobacco has long been practiced.

Wherever there are located tobacco warehouses the tobacco manufacturers send their "buyers." A "set" is from eight to twelve buyers, representing the large cigarette manufacturers, such as American Tobacco Company, Liggett & Meyers, R. J. Reynolds, China American and British American, etc. None of the cigarette manufacturers have factories in the State of Georgia.

When the "cured" tobacco is brought to a warehouse by the grower and for the purpose of selling his tobacco, it is displayed in rows and a sale is held each day of the season (in Georgia generally the month of August) except on Satur-

days and Sundays. The warehousemen, appellants here, always make the initial bid as each basket is offered for sale. They compete with the buyers from the cigarette manufactories until competition between the buyers has brought a price they think is fair to the grower. The warehouseman who secures the best prices for the grower's tobacco normally gets the most business.

The warehouseman owns or rents buildings of large area in the various market towns, his corps of assistants and skilled employees, including auctioneers, are hired for the season, be it one week or six weeks, and paid by the warehouseman. He must pay the grower immediately the sale is confirmed by the grower and await collections from the purchasers. Large sums of money are, therefore, required to carry on this business.

The scale of pay to the warehouseman has three elements:

(1) A weighing or warehouse charge;
(2) An auction fee;
(3) A commission on the gross amount of the sale.

The scale generally charged in 1934 was:

Auction fees—Twenty-five cents per pile up to and including 200 pounds; fifty cents per pile above 200 pounds;

Warehouse (weighing) fees—Twenty-five cents per pile up to 100 pounds; twenty-five cents for each additional 100 pounds;

Commissions—2½% on the gross sales measured in dollars.

By Act of the Georgia Legislature of March 28, 1935, here under attack, the scale is as follows:

"For auction fees fifteen cents on all piles on one hundred pounds or less and twenty-five cents on all piles over one hundred pounds;

"For weighing and handling ten cents per pile of all piles of one hundred pounds and ten cents for each additional one hundred pounds;

"For commission on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per cent (2½%) of said gross sales."

The appellants brought their bill alleging that the aforesaid statute violated their constitutional rights guaranteed by the Constitution of the United States in that regulation of their business to the extent of price-fixing was unreasonable, arbitrary and capricious, destroyed their right of contract, deprived them of their property without due process of law, and that the power to so regulate, if it existed, reposed in the Congress of the United States and not the Legislature of Georgia by reason of the fact that this business as carried on is intercourse in interstate and foreign commerce and is an instrumentality of interstate and foreign commerce and the statute imposes an unlawful burden on such commerce.

Temporary injunction was granted on condition that the appellants pay into the registry of the Court the difference between the scale of charges in effect for 1934 and those prescribed by the statute here under attack. By agreement the injunction was continued and evidence comprising over 2,000 pages, with numerous exhibits, was taken before an examiner. The examiner was later appointed Special Master to decide all issues of fact and report his conclusions of law to the Court, but serious illness prevented his completing the work. On July 15, 1936, the Statutory District Court revoked its order of reference and heard the cause on the record as made up. On October 19, 1936, a majority of the Court, Circuit Judge Holmes and District Judge Barrett, filed their opinion, findings of fact and conclusions of law, deciding all material issues in favor of respondents. District Judge Deaver filed a dissenting

opinion, disagreeing with the material findings of fact and conclusions of law as found by the majority.

A final decree in accord with the majority opinion, denying a permanent injunction and dismissing the bill, was entered and filed November 27, 1936.

(d) **Cases Sustaining Jurisdiction.**

Terrace v. *Thompson*, 263 U. S. 197;
Wadley Sou. Ry. v. *Georgia*, 235 U. S. 651;
Panama Refining Co. v. *Ryan*, 293 U. S. 388;
Ex parte Young, 209 U. S. 123;
William v. *Standard Oil Co.*, 278 U. S. 235;
Tyson & Bro. v. *Banton*, 273 U. S. 419;
Compare *McNutt* v. *General Motors Acceptance Corp.*, 298 U. S. 178.

Respectfully submitted:

J. O. Gibson,
E. Kontz Bennett,
E. K. Wilcox,
Robt. C. Alston,
W. Hart Sibley,
Solicitors for Appellants.

Wilcox, Connell & Wilcox,
Bennett & Bennett,
Alston, Alston, Foster & Moise,
Of Counsel.

APPENDIX "A".

AN ACT to create an act fixing a maximum charge by leaf tobacco warehouses of this state for selling and handling leaf tobacco and for other purposes.

SECTION 1. Be it enacted by the General Assembly and the same is hereby enacted by authority of the same. That beginning with the enactment and approval of this Act, that maximum charges and expenses of handling and selling leaf tobacco upon the floor of the tobacco warehouses of this state shall not exceed the following schedule, to-wit:

For auction fees fifteen cents (15) on all piles of one hundred pounds (100) or less and twenty-five cents (25) on all piles over one hundred pounds (100). For weighing and handling ten cents (10) per pile of all piles of one hundred (100) pounds and ten cents (10) for each additional one hundred pounds (100) for commissions on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per cent (2½) of said gross sales. The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commissions on each sale.

SECTION 2. Every proprietor or person operating a leaf tobacco warehouse in this State shall keep a correct account of all tobacco sold on the floor of his tobacco warehouse. Said account must show the correct amounts of leaf tobacco of first sale each day. The correct amounts resold each day by others upon the floor of said warehouses, and each and every proprietor or person operating a leaf tobacco warehouse in this state shall publish or cause to be published not later than thirty (30) days after close of selling season at said warehouse to be published in a newspaper of wide circulation located in the same county of the said warehouse, a correct statement showing all leaf tobacco of first sale by said warehouse, all tobacco resold by said warehouse and all tobacco resold by others upon the floor of said warehouse during selling season of the same year.

SECTION 3. Upon the passage and approval of this bill it shall be unlawful for any charges in excess of those named in this bill to be made or accepted and any proprietor or person in charge of a leaf tobacco warehouse in this state violating this act shall be guilty of a misdemeanor and punished for the same.

SECTION 4. That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed.

Filed Dec. 12, 1936. Geo. F. White, Clerk.

APPENDIX "B".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA, VALDOSTA DIVISION.

IN EQUITY.

No. 88.

C. R. TOWNSEND and PARK BERNARD, a Partnership Known as Townsend & Bernard, Doing Business as Cook County Warehouse, et al.

VS.

M. J. YEOMANS, Attorney-General for the State of Georgia, et al.

By act approved March 28, 1935, the General Assembly of the State of Georgia enacted as follows:

"• • • maximum charges and expenses of handling and selling leaf tobacco upon the floor of the tobacco warehouses of this State shall not exceed the following schedule to wit:

For auction fees fifteen cents (15) on all piles of one hundred pounds (100) or less and twenty-five cents (25) on all piles over one hundred pounds (100). For weighing and handling ten cents (10) per pile on all piles of one hundred (100) pounds and ten cents (10) for each additional one hundred pounds (100) • • •"

Some forty-five tobacco warehousemen brought a complaint against a number of law enforcing officers of the State of Georgia charging that the said act was "unjust, unreasonable, arbitrary and confiscatory" and that:

> "The said schedule of maximum charges prescribed by said purported Act, if put into effect, will deprive each of your orators of his, their or its property without due process of law and will deprive him, them or it of the equal protection of the law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, upon which your orators rely."

Defendants denied that the said act was void as against the complainants for any or all of the reasons alleged. They further contended that the relief prayed for could not be granted because there were no allegations as to the invalidity of the said act, especially as to its confiscatory nature as against each individual complainant and the allegation of the complaint as to such element being confined to aggregate of the complainants as distinguished from each individual complainant.

A Court was organized under Judicial Code Sec. 266, U. S. C. A., Title 28, p. 380.

By order of January 31, 1936, after a hearing had been had for sometime by such court, J. N. Talley, Esquire, of Macon, Georgia, was appointed as special master with power, among others, as follows:

> "That he shall hear, consider, and report upon all and each issue under or which may be made in this cause under the present pleadings, or such amendments as may be offered and allowed as to the question of the rates prescribed being confiscatory as to each of the plaintiffs separately."

There have never been proffered by complainants any amendment "as to the question of the rates prescribed being confiscatory as to each of the plaintiffs separately."

After extensive hearings by said master he was stricken with a serious illness and was unable to complete his labors.

Upon such conditions being brought to the attention of such court an order was passed on July 15, 1936, embracing, among other provisions, the following:

> "The order of reference of this cause to the Honorable J. N. Talley, dated January 31, 1936, be, and it is hereby revoked.
>
> The findings of fact of the master as identified by Judge Deaver be filed with the Clerk of this Court by August 1, 1936.
>
> Said papers as filed shall not be considered as a Master's report but only as information and as an aid to the court and the attorneys.
>
> • • • • • • • • •
>
> In their briefs counsel for each side shall indicate their agreement or disagreement with any finding of fact in the report of Honorable J. N. Talley and in support of a disagreement shall cite the pages of the record sustaining their position. If any additional findings of fact are desired by either party to be made by the court, request shall be made for such findings with appropriate citations to the parts of the record sustaining them."

Equity Rule 61½, reading as follows:

> "In all references to a master, either compulsorily by the court in cases where it has the power to make a compulsory reference, or by consent of parties where consent is necessary, whether the reference be of all issues of law and fact, or only particular issues of law or fact or both, the report of the master shall be treated as presumptively correct, but shall be subject to review by the court, and the court may adopt the same, or may modify or reject the same in whole or in part when the court in the exercise of its judgment is fully satisfied that error has been committed" • • •,

does not apply.

Findings of Fact.

By virtue of the aforesaid order as well as by reason of the great ability of Mr. Talley use is made of his re-

port, so far as it had progressed, in the following manner. His findings of fact are adopted and here stated just as he has written them except as modified by notes to the findings, as follows:

1. This suit is brought by the complainants named in the bill. Three of the complainants are corporations, three are individuals doing business under trade names, and sixty-seven are members of thirty partnerships, as set out in the bill.

2. The defendants described as officers are as named in the bill and hold the official positions therein stated, to-wit: Attorney General for the State of Georgia, the Solicitors General of eight judicial circuits, the sheriffs of fifteen counties, and Solicitors of the City Courts of eleven counties, of Georgia, and five of the defendants who are named as sheriffs of their respective counties are also parties defendant as members of the class of growers of leaf tobacco and as representatives of the class of sellers of such tobacco in the warehouses described in the original bill.

3. In this proceeding the amount and value involved exceeds the sum of three thousand dollars, exclusive of interest and costs. Each of the complainants has more than three thousand dollars involved in the subject matter of this litigation.

4. Complainants are engaged in the business of handling and selling loose-leaf tobacco in the State of Georgia, and a majority of the complainants have been so engaged for several years. The number of warehouses operated and the number of warehousemen engaged in their operation both vary from year to year.

5. For many years prior to 1916 the farmers in southern Georgia largely relied upon cotton as their chief money crop. The coming of the boll weevil, however, caused them to seek in tobacco a new source of revenue. Experienced men, called "demonstrators", from the Carolinas and other tobacco growing states were engaged by the Georgia farmers to assist them in the selection of suitable soil and instruct them in the science of growing and curing tobacco. By 1925 the

industry was becoming well established and two years later the employment of demonstrators had been almost entirely abandoned. Note: The last sentence in this paragraph is modified by inserting between the words "been" and "abandoned" the words "almost entirely".

The type of tobacco grown in Georgia is the "bright leaf" and is almost exclusively used in the manufacture of cigarettes. This variety is grown extensively in North Carolina, to a much less extent in South Carolina and Georgia, and to some extent in Virginia, Kentucky and Tennessee.

From small beginnings in 1917 the cultivation of tobacco has become an important industry. The acreage planted in tobacco by the individual farmer is comparatively small, but on account of the necessity of finding adaptable soil, the aggregate acreage is now not only very considerable but widely distributed over a large area in the southern portion of the state. In 1930 the sales of tobacco through the warehouses in Georgia reached a total of 106,483,019 pounds, and the sales during the tobacco season of 1935 realized the sum of $13,582,912.71.

6. The necessity for markets and the early maturity of tobacco in Georgia presented an opportunity which was early recognized by skilled and experienced warehousemen operating in the tobacco belts of North Carolina and other states having selling seasons which begin some time after the termination of the selling season in Georgia.

With few exceptions there are and have been resident in Georgia no competent warehousemen, or skilled and experienced auctioneers, calculators, clip-men, weighers, pay-off men, and similar experienced help to assist warehousemen in handling and selling tobacco at warehouse auction sales.

In order to sell their tobacco in warehouses in Georgia, such warehouses must be operated with possibly few exceptions by warehousemen from other tobacco states and the warehousemen must employ and bring to Georgia skilled assistants from other tobacco growing states. Note: This paragraph is modified to the extent of inserting between the words "operated" and "by" in the second line thereof the words "with possibly a few exceptions".

Of the forty-five warehouses operated in 1935, thirty-nine were operated by warehousemen who also operated or were connected in some capacity with the operation of warehouses in North Carolina, Kentucky, Virginia or Tennessee. The South Carolina selling season opens about ten days later than the Georgia season. The two seasons, therefore, conflict to such extent as to prevent warehousemen and skilled help coming to Georgia from that state.

7. The principal purchasers of the bright leaf tobacco grown in Georgia and in other states are limited to a few large manufacturers of cigarettes. "The Companies" they are called by the warehousemen in their testimony. The companies purchase tobacco only at warehouse auction sales, and only at warehouses to which they send or furnish "buyers". Each "buyer" is the representative of one of the competing purchasers, a "set of buyers" usually from eight to twelve in number, is made up of representatives from each of the purchasing cigarette manufacturing companies. The presence of a "set of buyers" is essential at such auction sale. A town in which is located one or more warehouses is known as a "market". If one set of buyers is allotted it is known as a "one-set market", and if two are furnished it becomes a "two-set" market. The manufacturers by sending a set of buyers to a new warehouse may recognize a new market and by refusing to send one to an old market may cause its abandonment, and by sending either one or two sets of buyers to a given market may determine the rapidity with which the accumulated tobacco may be disposed of at auction.

Another class of purchasers is known as "speculators". On rare occasions, a speculator purchases tobacco from a grower and has it transported to a warehouse for sale. At auction sales, speculators to a comparatively limited extent, in comparison with buyers, purchase tobacco for a later sale.

8. The tobacco belt comprises approximately twenty counties in the southern portion of the state, and in 1935 contained fifteen towns known as "markets", in which were operated forty-five warehouses operated that year by com-

plainants as warehousemen. Seven of the markets were furnished one set of buyers and eight were furnished two sets. The two-set markets had a total of thirty and the one-set markets a total of fifteen warehouses in operation.

The number of warehouses operated varies from year to year. In 1931 fifty-one warehouses were operated in twenty-one markets, in 1933 forty-two were operated, and in 1934 thirty-nine. Since 1932 the number of markets has remained at fifteen.

The quantity of tobacco sold in the warehouses located in the tobacco belt and as well the price received fluctuates from year to year as will appear from the following statement of aggregate sales and average prices for the years 1930 to 1935, inclusive:

Year	Gross Sales	Value	Average Price Per Pound
1930	106,483,019 lbs.	$10,501,228.63	9.86 cents
1931	60,881,696 lbs.	3,901,841.66	6.41 cents
1932	12,171,179 lbs.	1,267,211.07	10.40 cents
1933	59,853,963 lbs.	6,764,125.31	11.30 cents
1934	33,623,475 lbs.	6,299,751.96	16.73 cents
1935	71,826,352 lbs.	13,582,912.71	18.91 cents

9. (This is finding 10 of the master, he having inadvertently omitted a finding 9.)

In the normal and customary course of marketing in Georgia tobacco can only be sold in warehouses located in the tobacco belt of that state.

10. (This is finding 11 of the master.) Beginning with the tobacco selling season of 1927, all warehousemen operating warehouses in Georgia have uniformly maintained, and exacted from sellers, a hard and fast schedule of charges for their services in handling and selling leaf tobacco. There may have been some insignificant exceptions but they were so insignificant as to be immaterial. The schedule of charges so exacted and which was in effect at the time the Georgia tobacco warehouse Act was passed in March 1928 (should be 1935), was based upon three elements, the sale value of tobacco, the number of piles handled, and the weight of the quantity sold, and was as follows:

Commissions: Two and one-half per cent (2½%).
Auction fees: Twenty-five cents per pile up to and including 200 pounds; fifty cents per pile above 200 pounds;
Weighing and handling: Twenty-five cents per pile up to 100 pounds; twenty-five cents for each additional 100 pounds.

NOTE.—The above section modified by adding immediately after the first sentence these words *in brackets:* "There may have been some insignificant exceptions but they were so insignificant as to be immaterial".

Prior to 1927 the tobacco warehousemen in Georgia for many years, if not from the beginning of the industry, had maintained and exacted from sellers of tobacco a uniform schedule of charges substantially, if not identically, the same as the schedule fixed by the Act of 1935 the validity of which is now being challenged by complainants.

11. (This is finding 13 of the master, he having apparently by inadvertence omitted a finding 12.) The Georgia tobacco warehouse Act, approved March 28, 1935, a copy of which may be found herein at page —, prescribed a schedule of maximum commissions and fees which may be lawfully charged by proprietors or persons in charge of warehouses for their services in handling and selling leaf tobacco in warehouses in the state of Georgia. The schedule so prescribed is as follows:

Commissions: Two and one-half per cent (2½%) on gross sales;
Auction fees: Fifteen cents on all piles of 100 pounds or less; twenty-five cents on all piles over 100 pounds;
Weighing and handling: Ten cents per pile of 100 pounds or less, and ten cents for each additional 100 pounds.

Under the statutory maximum schedule of charges the item of commissions, two and one-half per cent, remains

the same as in the "former charges", or those being made at the time the Act was passed. The reduction of former charges made by the Act is confined to the two items, auction fees and fees for weighing and handling. The percentage reduction is difficult of exact determination because it depends upon the number of and weight of all piles of tobacco handled.

The said Act of 1935, if enforced, will reduce the amounts received by warehousemen for their services under the former schedule of charges by approximately — per cent.

The difference in dollars between the amount the complainants would have received for their services in 1935 based upon the former or higher schedule and the amount they would be entitled to receive under the statutory or lower schedule is $115,920.90, the amount deposited in the registry.

12. (This is finding 14 of the master.) There is strenuous and expensive competition between warehousemen in securing tobacco from growers to be handled and sold in their respective warehouses, but in the sale of tobacco there is no competition except such as exists between the respective buyers and speculators at the auction sales, and the bids of the warehousemen themselves. For their services, the warehousemen throughout the tobacco belt uniformly deduct from the purchase price stated amounts according to their established schedule.

NOTE.—This finding is modified slightly only by adding immediately at the end of the first sentence and before the period the words "and the bids of the warehouseman himself."

13. (Master's finding 15.) There is substituted for this finding 15, the following: "By reason of their control of the warehouses in which tobacco is sold, in the normal and customary course of marketing in Georgia the warehousemen have, unless regulated by law, an unduly coercive control over prices charged the growers for services."

14. (The master's second number 15 finding.) After tobacco has been cured and is ready for the market the

grower grades it, as best he can, and the resulting "piles" of loose leaves are placed in sheets, which are then tied and the tobacco is so transported to the selected warehouse for sale. There the warehouseman and his employees take charge. The tobacco is unloaded, the piles dumped into flat baskets, the sheets removed, the tobacco weighed, and there is placed on the basket a ticket giving the name of the owner and the weight of the pile. The baskets of tobacco are then placed in long parallel rows along the floor of the warehouse.

Auction sales in a "market" are held daily during five days of the week, and in a particular warehouse as often as sufficient tobacco accumulates and a set of buyers go to another, but sales usually begin at nine o'clock in the morning. For the reason above stated the number of sale days at a particular warehouse during the selling season is a variable quantity.

It is essential that there be present, the warehouseman, an auctioneer, and other skilled help who are employed by the warehouseman, and one set of buyers.

As the informal procession moves along the row each basket of tobacco is offered for sale by the auctioneer and such is the rapidity of movements that sales are made at an average rate of six baskets per minute.

The warehouseman starts the auction of each basket by making the opening bid. If this is not taken or raised by another, the warehouseman becomes generally the purchaser of the tobacco for his own account. If not sold in this summary fashion, the bidding for the basket continues until its sale is announced by the auctioneer, and a card is dropped on the pile giving the name of the purchaser and the amount of his bid. The grower or other owner, however, has the right to turn down the sale and this may be accomplished by turning over the card. The grower in such case may hold his tobacco for a later sale or remove it from the warehouse. Immediately after a sale of a lot has been completed the tobacco sold is delivered to the purchaser who removes it from the floor. It is re-weighed by the purchaser, who, usually several days later, makes payment to the warehouseman, and this is based upon the re-weight of

the tobacco, less a small amount for shrinkage. As soon as the sale of a lot is completed the warehouseman pays to the seller the purchase price of the tobacco, less warehouse charges. This payment is made upon the basis of the weight of the tobacco after it reaches the warehouse and before being placed on the floor for sale. While an auction sale is in progress the warehouseman from time to time makes bids for baskets being offered. The purpose of this bidding, as well as of making the opening bid, is to boost the bidding of the buyers and speculators, in an effort to secure for the seller the best price obtainable. The tobacco so purchased as above by the warehouseman is afterwards also sold at auction, and may result in a profit or a loss to the warehouseman, and is shown in his "leaf account". References to "gross sales" in this report are to gross "first hand" sales and re-sales are not included. During the progress of auction sales a considerable quantity of tobacco leaves are left on the floor. This is known as "sweepings" or "scoop", is sold by the warehouseman and the amount received for it carried into his "leaf account" where it may reduce the loss shown by that account. The balance shown by that account appears in the warehouseman's statement of income as an added item.

NOTE.—To avoid any possible inaccuracy of statement there is inserted between the words "warehouseman" and "becomes" in the third line of this paragraph the word "generally".

15. (Master's finding 16.) The tobacco selling season in Georgia is from three to five weeks in length. The 1935 season began on the first day of August and closed on the twenty-first day of the same month.

The tobacco is ready for the market the latter part of July or early in August dependent upon the growing conditions. The exact date for opening the selling season is fixed by the manufacturers of tobacco, who are the principal buyers, and the warehousemen who operate warehouses in the tobacco belt. The exact closing date is fixed by the warehousemen and the buyers at the several markets.

The short tobacco season causes growers to rush tobacco to the market and does not afford to them a fair opportunity to properly grade, store, bundle, and orderly market their tobacco.

The short season is in large part occasioned by the efforts of the manufacturers to transfer their buyers to the North Carolina belts, in some of which the selling seasons begin early in September, and the efforts of the warehousemen to dispose of the tobacco in Georgia in order that they and their auctioneers and other skilled employees may proceed to the later and larger seasons of North Carolina and other states there to continue their warehouse businesses.

(The foregoing are all of the master's findings. The following additional findings are made.)

16. Statutes fixing the same scale of charges as proposed in the Georgia act of 1935 are the same in North Carolina and South Carolina. The scale of charges heretofore in effect in Georgia is not so high as the non statutory Tennessee or Kentucky charges. No attack has been made upon the constitutionality of the Carolina statutes.

17. The propriety of charging materially or any more for handling tobacco in Georgia than in the Carolinas is not established.

18. It is not established that the Act attacked was passed without any knowledge on the part of the legislature as to actual conditions under which the business was, and is, being carried on in Georgia.

19. It is not proven what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the act attacked. It is not denied that some warehousemen earned a satisfactory profit. It is not proven that in instances where a loss occurred such loss was not due to excessive competition, ill advised loans, unnecessary expenses in buying influence or hauling customers' tobacco, or other causes than the reduction in charges. The testimony as to the effects of the act attacked is as to the group of warehousemen who are

complainants, rather than to the effect on each one, and even then it is not proven that all the losses are traceable to the reduction in charges rather than to other causes.

20. Among the warehousemen there has been organized what is known as the Tobacco Warehousemen's Association, of which all complainants in this case are members. There is no warehousemen in the Georgia market not joined in the instant suit. The prosecution of the suit is an organized fight through the Warehousemen's Association. The growers are not eligible for membership in this Association. The Association and the buyers determine the date the market in Georgia opens and substantially determine the date on which it closes. The Association undertakes to deal with such practices as affect the interest of the members thereof and adopts regulatory rules to be observed by such members. A new member is admitted when he becomes identified with the tobacco warehouse business in Georgia and promises to be governed in his charges by the schedule of fees then in effect throughout the State of Georgia as fixed by the Association.

On page 94 of the minutes of said Association of a meeting of May 8, 1934, the following entry appears:

> "The Secretary was requested to read letter of President Brown to Mr. J. C. Lanier requesting that no reduction be made in commissions or charges by the Georgia warehousemen for the year 1934 season. After discussion of the matter it was decided that no changes should be made in charges, but that if any were made it would be higher instead of lower."

On page 91 of the minutes of the meeting of the Association of June 8, 1934, appears an entry to the effect that the object of the meeting was explained by W. E. Fenner as being

> "For the consideration of the bill passed by the Georgia legislature fixing warehouse charges, and a committee was appointed to employ attorneys."

On page 90 of the minutes of said Association of a called meeting of June 22, 1935, appears an entry as follows:

"Motion was made and carried that an additional assessment of $75.00 per warehouse be made, this to be for employment of attorneys (in this case)."

On page 89 of the minutes of said Association of a meeting of July 11, 1935, appears an entry as follows:

"On motion made and carried small warehouses assessed $85.00 and others $125.00 in making up fund for legal expenses (this case)."

On page 88 of the minutes of said Association of a meeting of July 30, 1935, appears the following:

"Upon motion duly made and carried the President was authorized to appoint at least a half dozen members of the Association to attend the Macon hearing (the interlocutory hearing in this case) and be prepared to give any testimony that might be desired by the court."

The complainants through the Warehousemen's Association and their common agreement as to the fees to be charged by them for services rendered maintain and enjoy a virtual monopoly in the field covered by their operations.

21. The business of tobacco warehousemen as conducted in Georgia in the year 1935 and for some years prior thereto was such as to cause it to be "affected with a public interest" and "clothed with a public use."

22. The scale of charges prescribed by the said Georgia Act of 1935 is not unreasonable, arbitrary and capricious and is reasonably adapted to accomplish the desired results.

23. The fixing of a scale of prices for services rendered by the warehouseman does not burden or interfere with interstate commerce.

Conclusions of Law.

1. The character of presumption in favor of legislative action and the method and conditions of attack to overcome such presumption are fully stated by the Supreme Court

of the United States in the case of Borden's Company v. Baldwin, 293 U. S. 194. It would be superfluous to repeat here. Under our findings of fact the attack has not been sustained by appeal to judicial notice or by testimony.

2. Unless "confiscation is clearly established" attack on that ground must fail. Los Angeles Gas Co. v. R. R. Com., 287 U. S. 287. There has been no such proof in this case.

3. The Supreme Court has in the recent case of Nebbia v. New York, 291 U. S. 502, presented such an able and exhaustive discussion on both sides of the question as to when an occupation is so "affected with a public interest" or "clothed with a public use" as to be subject to legislative control to the extent of price fixing that any attempt at clarification by us would be presumption. Under that decision the statute under attack is clearly within the scope of legislative power.

4. As we understand the contention of complainants it is, that because the acts of the warehousemen constitute one step in getting the tobacco to the manufacturers and such manufacturers all, or practically all, reside out of this state and it was known at the time the services were rendered by the warehousemen that the ultimate destination of the tobacco would be out of this state, that such services constituted a part of interstate commerce. We cannot agree with this contention. If sound, logically it would lead us to the conclusion that the very planting and harvesting of tobacco were parts of interstate commerce, for the reason that each of such acts was with the knowledge that all or practically all of the tobacco would ultimately move out of this state. See Chassaniol v. Greenwood, 291 U. S., 584, 587, tax on local cotton buyers.

5. Proof that the group, as an entity, was losing money is not sufficient to justify the invalidation of the Act. In order to justify the relief prayed for by the group as a whole it would be necessary to segregate the individual members thereof and ascertain whether the act was unconstitutional as to each one and that relief should be granted as to each one. Such proof has not been proffered in this case. See

Heald v. District of Columbia, 259 U. S. 114, 123, and the cases cited in the footnote.

The result is that all the prayers of the bill are denied and an appropriate decree may be presented in according with the conclusions reached.

This — day of October, 1936.

E. R. HOLMES,
United States Circuit Judge.
WM. H. BARRETT,
United States District Judge.

Filed Oct. 19, 1936.

APPENDIX "C".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE VALDOSTA DIVISION OF THE MIDDLE DISTRICT OF GEORGIA.

IN EQUITY.

Number 88.

C. R. TOWNSEND and PARK BERNARD, A Partnership Known as Townsend & Bernard, Doing Business as Cook County Warehouse, et al.,

vs.

M. J. YEOMANS, Attorney General for the State of Georgia, et al.

Two members of the three-judge court make, among others, the following findings of fact:

"The necessity for markets and the early maturity of tobacco in Georgia presented an opportunity which was early recognized by skilled and experienced warehousemen operating in the tobacco belts of North Carolina and other states having selling seasons which begin some time after the termination of the selling season in Georgia.

"With few exceptions there are and have been resident in Georgia no competent warehousemen, or skilled and experienced auctioneers, calculators, clip-men, weighers, pay-

off men, and similar experienced help to assist warehousemen in handling and selling tobacco at warehouse auction sales.

"In order to sell their tobacco in warehouses located in Georgia, such warehouses must be operated by warehousemen from other tobacco states and the warehousemen must employ and bring to Georgia skilled assistants from other tobacco growing states. * * * Note: This paragraph is modified to the extent of inserting between the words 'operated' and 'by' in the second line thereof the words 'with possibly a few exceptions'." (First part of finding of fact No. "6".)

"By reason of their control of the warehouses in which tobacco is sold, in the normal and customary course of marketing in Georgia, the warehouseman have, unless regulated by law, an unduly coercive control over prices charged the growers for services." (Finding of Fact No. "13".)

"It is not proven what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the act attacked. It is not denied that some warehousemen earned a satisfactory profit. It is not proven that in instances where a loss occurred such loss was not due to excessive competition, ill advised loans, unnecessary expenses in buying influence or hauling customers' tobacco, or other causes than the reduction in charges. The testimony as to the effects of the act attacked is as to the group of warehousemen who are complainants, rather than to the effect on each one, and even then it is not proven that all of the losses are traceable to the reduction in charges rather than to other causes." (Finding of Fact No. "19".)

"The complainants through the Warehousemen's Association and their common agreement as to the fees to be charged by them for services rendered maintain and enjoy a virtual monopoly in the field covered by their operations." (Last paragraph Finding of Fact No. "20".)

"The business of tobacco warehousemen as conducted in Georgia in the year 1935 and for some years prior thereto was such as to cause it to be 'affected with a public interest' and 'clothed with a public use'." (Finding of Fact No. "21".)

"The scale of charges prescribed by the said Georgia Act of 1935 is not unreasonable, arbitrary and capricious and is reasonably adapted to accomplish the desired results." (Finding of Fact No. "22".)

And the following conclusions of law:

"The Supreme Court has in the recent case of Nebbia v. New York, 291 U. S. 502, presented such an able and exhaustive discussion on both sides of the question as to when an occupation is so 'affected with a public interest' or 'clothed with a public use' as to be subject to legislative control to the extent of price fixing that any attempt at clarification by us would be presumption. Under that decision, the statute under attack is clearly within the scope of legislative power." (Conclusion of Law No. "3".)

"As we understand the contention of complainants, it is, that because the acts of the warthousemen constitute one step in getting the tobacco to the manufacturers and such manufacturers all, or practically all, reside out of this state and it was known at the time the services were rendered by the warehousemen that the ultimate destination of the tobacco would be out of this state, that such services constituted a part of interstate commerce. We cannot agree with this contention. If sound, logically it would lead us to the conclusion that the very planting and harvesting of tobacco were parts of interstate commerce, for the reason that each of such acts was with the knowledge that all or practically all of the tobacco would ultimately move out of this state. See Chassaniol v. Greenwood, 291 U. S. 584, 587." (Conclusion of Law No. "4".)

"Proof that the group, as an entity, was losing money is not sufficient to justify the invalidation of the Act. In order to justify the relief prayed for by the group as a whole it would be necessary to segregate the individual members thereof and ascertain whether the act was unconstitutional as to each one and that relief should be granted as to each one. Such proof has not been proffered in this case. See Heald v. District of Columbia, 259 U. S. 114, 123, and cases cited in the footnote." (Conclusion of Law No. "5".)

To these findings and conclusions, I find myself unable to agree.

Findings of fact numbers "6", "13" and "20" deal in the main with the question of monopoly.

Number "6" finds that the Georgia warehouses must be operated, with few exceptions, by warehousemen from other tobacco states, and that the warehousemen must employ and bring to Georgia skilled assistants from other tobacco states. It cannot, it seems to me, be said, as a basis for permanent legislation, that no one except those already engaged in the warehouse business in other states, has the ability to operate a warehouse. The evidence shows that some local men do either own or rent warehouses and employ experienced warehousemen to operate them. The fact that skilled assistants must be employed does not exclude any competent business man from engaging in the warehouse business.

Numbers "13" and "20" find that the warehousemen have an unduly coercive control over prices charged for their services and enjoy a virtual monopoly. For that to be true, it would be necessary for these nonresident warehousemen to possess all the business ability in that line and to have a "corner" on skilled employees, or to have such control over the tobacco companies as to prevent them from sending buyers to any warehouse not operated by the nonresident warehousemen. The evidence does not show any conspiracy between the companies and the warehousemen. Nor does it show any control by the warehousemen over skilled help necessary to be employed in warehouses. Nor does it show that these nonresident warehousemen are the only persons who have sufficient ability to rent or own a warehouse and have it properly operated. The warehouse business is a wide open field and anyone with even modest capital may enter it. It is not conceivable to me that growers in a comparatively small territory like southern Georgia, with a crop of the value of many millions of dollars could successfully contend that they are controlled and coerced by a few warehousemen, when those growers who now carry their crops to a given market could, by the outlay of an almost insignificant portion of the value of their

crops, furnish, in that same town or "market", facilities for disposing of their tobacco. It is not shown that buyers would not be sent there. And, if the warehousemen now operating are charging excessive prices for their services, in view of the expenses incident to their operation, then the growers could not only dispose of their crops through other warehousemen employed by them, but could also make money on the warehouses themselves. Instead of the warehousemen being in position to coerce the growers, the growers are in position to coerce the warehousemen to the point of extinction. There is no monopoly.

Number "21" finds that the warehouse business is "affected with a public interest." There is, I think, no monopoly, and there is, in my opinion, nothing in the evidence, in the absence of monopoly, to impress the business with a public interest.

Number "22" finds that the Act in question is not arbitrary and is reasonably adapted to accomplish the desired results. The Act is permanent and intended to operate alike each year without reference to the size of the tobacco crop in any year. The expense of operating a warehouse is not governed by and has no relation to the size of the crop. The income of the warehousemen from auction fees and weighing and handling fees is dependent upon the number and weight of piles of tobacco handled (Finding of Fact No. "11"); that is to say, upon the size of the crop. There is no provision for adjusting fees to accord with the yearly changing volume of business. (See Finding of Fact No. "8".) The act fixes no standard basis upon which a reasonable return on the money invested and the services performed in the business may be realized. A return reasonable for one year would be unreasonable for another year—either too large or too small. There is no common factor which influences both investment and return. A return which depends upon the uncertain size of the crop has no relation to or connection with reasonableness or unreasonableness. An act which does not relate investment to return but lets the former take care of itself and makes the latter depend upon an uncertain and constantly changing factor may be said to approach the arbitrary, even without strict

proof of confiscation at any given time. However, whether that fact renders the act arbitrary or not, under the Nebbia case, 291 U. S. 502, 536, if regulation is not necessary for the public good, attempted regulation is an arbitrary interference with individual liberty.

Is the act reasonably adapted to accomplish the desired result? Finding of fact number "9" is that "In the normal and customary course of marketing in Georgia, tobacco can only be sold in warehouses located in the tobacco belt of that state." A part of finding number "6" is that, "In order to sell their tobacco in warehouses located in Georgia, such warehouses must be operated, with possibly a few exceptions, by warehousemen from other tobacco states. * * *"

The purpose of the act, I take it, is to protect the growers in their income from crops. Now, if by reason of weather conditions or insects or blight, the crop in any given year should be so small that the warehousemen would decide not to come to Georgia that year, then, if the findings above stated are correct, the growers could not dispose of their crops at all, and their income for that year would be totally destroyed. Such a result would not be the desired result. Of course, the growers do not fear such a result, and the reason they do not is because they know that if all the associated nonresident warehousemen were to quit, other people or the growers themselves would build or rent warehouses and that buyers and auctioneers would be available to dispose of the crop. Growing tobacco for sale is a business, and selling tobacco by warehousemen is a business, and each, if left free, is able to take care of itself without any injury to the public or any substantial group of the public. The act is an effort, it seems to me, to limit and circumscribe one business for the benefit of another without any public necessity for doing so; and is, therefore, an arbitrary interference with individual liberty. It follows, I think, that, if the findings of fact are not correct, the act is arbitrary and, if the findings are correct, the act is not reasonably adapted to accomplish the desired end.

In the case of Lemke vs. Farmers Grain Co., 258 U. S. 50, the Supreme Court held that the buying of grain in North Dakota for shipment to other states for sale was

interstate commerce. In that case was cited the Dahnke-Walker Milling Co. case, in which the facts disclose that a Tennessee company went into Kentucky and brought wheat for shipment to the company's mill in Tennessee. The court held "that the buying, no less than the selling, of grain under such circumstances was a part of interstate commerce." On page 55 of the Lemke case, the court refers to cases in which "we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of federal control." The court then says, "Cases of that type are not in conflict with principles recognized as controlling here. None of them indicates, much less decides, that interstate commerce does not include the buying and selling of products for shipment beyond state lines."

Under that authority, there can scarcely be any doubt that the selling of tobacco at the Georgia warehouses for shipment to other states is a part of interstate commerce.

In the Lemke case, the court said, "Even when the particular subject remains unregulated by Congress, a State cannot lay burdens on interstate commerce in the guise of police regulations to protect the welfare of her people."

Then, in this tobacco case, the question is whether the fixing of auction fees and weighing and handling fees places any burden on interstate commerce. I do not think so. But the reason I do not think so is because, in my opinion, the plaintiff warehousemen do not enjoy a monopoly and are, therefore, not an indispensable part of the interstate business. If these nonresident warehousemen had a monopoly on the Georgia tobacco business, and, if without them, the crops could not be sold and put into interstate commerce, and, if no persons except these warehousemen, who are members of the Tobacco Warehousemen's Association, could engage in the warehouse business, and if the growers for lack of financial ability could not rent or build warehouses and employ skilled men to operate them, or if the purchasing companies were controlled by the warehousemen or were in a conspiracy with them and refused to send buyers, then, in my opinion, the warehousemen would be

so indispensably necessary to the interstate transaction as to become a part of it, if such should be the case, it would not be necessary to show that the act is confiscatory as to all the warehousemen and thus bring it within the due process clause, but any regulation under which only a few could operate at a profit would place a burden on interstate commerce.

Finding of Fact No. "19" is as follows: "It is not proven what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the act attacked. It is not denied that some warehousemen earned a satisfactory profit. It is not proven that in instances where a loss occurred such loss was not due to excessive competition, ill advised loans, unnecessary expenses in buying influence or hauling customers' tobacco, or other causes than the reduction in charges. The testimony as to the effects of the act attacked is as to the group of warehousemen who are complainants, rather than to the effect on each one, and even then it is not proven that all the losses are traceable to the reduction in charges rather than to other causes."

The "other causes" referred to in that finding would exist as well under the act as without it. In finding number "6", the warehousemen are referred to as "skilled and experienced warehousemen." They are in the business to make money. Those practices suggested in finding number "19" as possibly causing the losses must be regarded by these skilled and experienced warehousemen as helpful to the business. Those practices and the strenuous competition would increase rather than decrease under the act, because profit depends upon volume.

The court finds in number "15", that the tobacco season is short and that growers have to rush their tobacco to market. That fact will remain true under the act, making it necessary that more than a few warehouses operate in order to handle the crop in so short a time.

Therefore, if the warehouse business is a monopoly and is a part of interstate commerce, and if skilled and experienced warehousemen operate at a loss, except some who "make a satisfactory profit", then a regulation of fees

which makes it impossible for the warehouse business in general to operate at a profit, though some might make a profit, would have the effect of placing a burden on interstate commerce.

But, as before stated, the contention of the growers that there is a monopoly (which logically would cause the act to be an interference with interstate commerce) is not, in my opinion, supported by the evidence.

I agree that the act does not burden interstate commerce, but I do so because I think there is no monopoly, and for the same reason I think the warehouse business is not "affected with a public interest."

If these warehousemen did have a monopoly in the sense hereinbefore stated, the business would undoubtedly be impressed with a public interest which would authorize regulation. But when there is no monopoly and the business is open and there are no conditions, such as prohibitive cost, to prevent others from engaging in it, and when the growers have at their command complete power to compel reasonable charges or to drive out of business those who charge excessive fees, then there is no reason that I can see why such a business should be regulated to the extent of fixing the prices to be charged for services.

The Nebbia case, 291 U. S. 502, does not control this case. The court says, "affected with a public interest" means only that the business is subject to the police power and that the absence of monopoly is not controlling, if there are other reasons for regulation. But the Nebbia case makes it clear that, as a power to regulate, each case stands on its own facts, there being no monopoly in the tobacco case and there being no other reason for regulation in the public interest, the Nebbia case does not demand the upholding of the act now in question.

BASCOM S. DEAVER,
U. S. District Judge.

Filed Oct. 19, 1936.

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Supreme Court of the United States

OCTOBER TERM, 1936

C. R. TOWNSEND and PARK BERNARD, a partnership known as TOWNSEND & BERNARD, doing business as COOK COUNTY WAREHOUSE, et al,

Appellants,

versus

M. J. YEOMANS, Attorney-General for the State of Georgia, et al,

Appellees.

No. 781

BRIEF ON BEHALF OF APPELLANTS

J. O. GIBSON,
E. KONTZ BENNETT,
E. K. WILCOX,
ROBERT C. ALSTON,
WM. HART SIBLEY,
Counsel for Appellants.

April 26, 1937.

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Supreme Court of the United States

OCTOBER TERM, 1936

C. R. TOWNSEND and PARK BERNARD, a partnership known as TOWNSEND & BERNARD, doing business as COOK COUNTY WAREHOUSE, et al,

Appellants,

versus

M. J. YEOMANS, Attorney-General for the State of Georgia, et al,

Appellees.

No. 781

BRIEF ON BEHALF OF APPELLANTS

I

STATEMENT AS TO JURISDICTION AND NATURE OF THE APPEAL

This is an appeal from a final decree of the United States District Court for the Middle District of Georgia, wherein a specially organized statutory court, consisting of Circuit

Judge E. R. Holmes, District Judge William H. Barrett, and District Judge Bascom S. Deaver, denied a permanent injunction prayed for by complainants below (appellants here) and dismissed their bill, Judge Deaver dissenting.

The final decree was dated and entered November 27, 1936, and found in favor of defendants below (appellees here) all issues of law and fact and dismissed the bill, R. p. 96. The findings of fact, conclusions of law, and the opinion of the majority members of the court and the dissent of Judge Deaver, were filed October 19, 1936, and are not yet reported, R. pp. 74, 88.

Probable jurisdiction of this Court was noted March 29, 1937, on the basis of appellants' Statement as to Jurisdiction, duly served and filed pursuant to Paragraph 1, Rule 12, of this Court.

The appeal is of right under Section 238 of the Judicial Code as amended by the Act of Congress of February 13, 1925, (Chapter 229, Par. 1, 43 Statutes 938, 28 U.S.C.A. 345), and also Section 266 of the Judicial Code as amended by the Act of Congress of February 13, 1925, (Chapter 229, Par. 1, 43 Statutes 938, 28 U.S.C.A. 380).

II

STATEMENT OF THE CASE

(a) Status of the Case

Appellants are tobacco warehousemen who carried on their businesses as such in the State of Georgia in 1935 and 1936.

On July 25, 1935, after due notice to the Governor of the State of Georgia and the Attorney-General, R. p. 22, they brought their bill in the United States District Court for the Middle District of Georgia, R. pp. 1, 35, 52, challenging the constitutionality of an Act of the General Assembly of Georgia, approved March 28, 1935, which is as follows:

"An Act to Create an act fixing a maximum charge by leaf tobacco warehouses of this State for selling and handling leaf tobacco and for other purposes.

"Section 1. Be it enacted by the General Assembly and the same is hereby enacted by authority of the same, That beginning with the enactment and approval of this Act, that maximum charges and expenses of handling and selling leaf tobacco upon the floor of the tobacco warehouses of this State shall not exceed the following schedule, to-wit:

"For auction fees fifteen cents (15) on all piles of one hundred pounds (100) or less and twenty-five cents (25) on all piles over one hundred pounds (100). For weighing and handling ten cents (10) per pile of all piles of one hundred (100) pounds and ten cents (10) for each additional one hundred pounds (100) for commissions on the gross sales of

leaf tobacco in said warehouses not to exceed two and one-half per cent (2½) of said gross sales. The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commissions on each sale.

"Section 2. Every proprietor or person operating a leaf tobacco warehouse in this State shall keep a correct account of all tobacco sold on the floor of his tobacco warehouse. Said account must show the correct amounts of leaf tobacco of first sale each day. The correct amounts resold each day by others upon the floor of said warehouses, and each and every proprietor or person operating a leaf tobacco warehouse in this State shall publish or cause to be published not later than thirty (30) days after close of selling season at said warehouse to be published in a newspaper of wide circulation located in the same county of the said warehouse, a correct statement showing all leaf tobacco of first sale by said warehouse, all tobacco resold by said warehouse and all tobacco resold by others upon the floor of said warehouse during selling season of the same year.

"Section 3. Upon the passage and approval of this bill it shall be unlawful for any charges in excess of those named in this bill to be made or accepted and any proprietor or person in charge of a leaf tobacco warehouse in this State violating this act shall be guilty of a misdemeanor and punished for the same.

"Section 4. That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed."

(R. p. 15.)

The State of Georgia, by and through her Attorney-General, Honorable M. J. Yeomans, the Solicitors-General of the eight Judicial Circuits in the tobacco producing area of the State, the Sheriffs of the thirteen counties in which are located tobacco warehouses of appellants, and the Solicitors of the City Courts of ten of these counties, R. p. 3, and by amendment six of these officials in their individual capacities as growers of tobacco, members of a class, R. p. 38, were all named respondents.

The original bill, R. p. 1, and two amendments thereto, R. pp. 35, 52, challenged the above quoted Act on these grounds:

(a) The business of handling and selling leaf tobacco is not impressed with public interest, and is not subject to regulation by the General Assembly of Georgia;

(b) Said business is not so impressed with a public interest as to empower the General Assembly of Georgia to control any or all of the aforementioned charges;

(c) The General Assembly of Georgia is without power or jurisdiction to enact or to enforce the purported enactment hereinabove quoted;

(d) The schedule of charges in force prior to the enactment of the aforesaid Act are fair and reasonable and have been satisfactory to the growers and sellers of tobacco in the State of Georgia;

(e) The schedule of charges prescribed by the purported enactment of the General Assembly will produce a reduction of from twenty to thirty per cent in the income of plaintiffs;

(f) The charges prescribed by the purported enactment of the General Assembly are unjust and unreason-

able and will not provide your plaintiffs an adequate reward for the time and services rendered and for the use of their respective properties;

(g) Plaintiffs have no adequate remedy at law, and equity must intervene to prevent a multiplicity of suits;

(h) The said schedule of maximum charges prescribed by said purported Act, if put into effect, will deprive each plaintiff of his, their, or its property without due process of law, and will deprive him, them or it of the equal protection of the law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States;

(i) Plaintiffs are entitled to a safe and adequate judicial review of the schedule of charges purported to be enacted by the General Assembly of Georgia;

(j) The State of Georgia, through its legislative department, has and had no jurisdiction over the subject matter of said purported Act;

(k) Said purported Act is unreasonable, arbitrary and capricious in its operation and effect, and cannot be sustained when measured by the facts relevant thereto;

(l) The said purported Act is not a reasonable exertion of governmental authority for the following reasons:

1. The same was adopted without an investigation or examination of the relevant facts surrounding the business called that of tobacco warehousing in Georgia;

2. There has been no board or other body created to ascertain the facts surrounding this business, the manner in which it is conducted, the cost thereof, the returns therefrom, and the relation between the cost of business done, and rewards received therefor;

3. Said Act was adopted without providing to the persons of interest the means of a hearing thereon, without the right to have witnesses, and without proper investigation and adequate determination of the facts;

4. The said Act, fixing the prices to be charged, has no relation to the public health and is not based upon any requirement of public needs, and the regulation of charges has no real or substantial relation to any object or purpose sought to be attained by said Act, and it has no purpose to the rectifying of which regulation is a reasonable or appropriate means;

5. Said Act, in so far as it undertakes to control prices and charges, is arbitrary and irrelevant to the policy of the Legislature, and unnecessary and unwarranted interference with the right of individual contracts;

6. The schedule of charges prescribed by the purported Act of the General Assembly does not provide adequate compensation to plaintiffs for the time, services and risk attendant upon the conduct of said business, and will not provide an adequate reward or return on investments and outlays made by plaintiffs in carrying on said business;

7. Said Act was not enacted in response to any emergency;

8. Said schedule of charges prescribed by said purported Act undertakes to make a hard and fast schedule, which is unreasonable, arbitrary and capricious in view of the various factors that enter into each season's operation of plaintiff's business, and is not subject to variation as production and quality vary from year to year.

(m) The Legislature of the State of Georgia has no power to regulate tobacco warehouses, in that the buying

and selling of tobacco, which is an integral part of plaintiff's business, as carried on in the State of Georgia, is interstate commerce, and the purported enactment of the General Assembly places an unreasonable and undue burden on interstate commerce, and what power of regulation exists resides in the Congress of the United States alone;

(n) The schedule of charges fixed by the purported Act of the General Assembly of Georgia is confiscatory.

These several grounds of attack may well be condensed to the following general contentions:

1. The absence of power in the General Assembly of Georgia to enact the statute;

2. Assuming power in the State Legislature, the particular Act is an unreasonable, arbitrary and capricious exercise of the State police power.

Defensive pleadings were filed by all the respondents below (appellees here) R. pp. 26, 45, 54. They appeared at the preliminary hearings through counsel.

Honorable Bascom S. Deaver, Judge of the United States District Court for the Middle District of Georgia, on July 27, 1935, entered an order temporarily restraining and enjoining the defendants from enforcing the Act, under conditions therein set out, R. p. 23. Immediately he called to his assistance Circuit Judge Nathan P. Bryan and District Judge William H. Barrett for the interlocutory hearing, R. p. 34.

The specially constituted statutory court ordered on September 5, 1935, that a Special Examiner proceed to take the testimony, R. p. 57. By consent of counsel the temporary

restraining order was continued and it was agreed that the hearing, when had before the special statutory court, should dispose of the cause finally and permanent relief be granted or denied.

Extensive hearings were had by the Examiner and voluminous evidence taken over a period of several months.

On January 31, 1936, the cause came on for hearing before Circuit Judge Richard N. Walker, District Judge Barrett, and District Judge Deaver,—Judge Bryan having died August 31, 1935, Judge Walker was called to take his place. At this hearing the court, on its own motion, referred the entire cause to a Master, appointing the Examiner, Mr. J. N. Talley, to make findings of fact and conclusions of law on all issues in the cause, R. p. 61; Mr. Talley suffered a severe illness and was unable to complete his work.

Judge Walker died April 10, 1936, and Circuit Judge Edwin R. Holmes was called to take his place. On July 15, 1936, the matter came on for hearing before Circuit Judge Holmes, District Judge Barrett and District Judge Deaver, and on motion the order of reference was revoked and the cause set down for hearing on the record as then made up, R. p. 73. The court directed that the report of the Special Master, Mr. Talley, be filed for use of counsel and the court and that briefs be prepared and submitted.

The incomplete findings of the Special Master were adopted almost verbatim by the majority of the court in its findings of fact which were filed October 19, 1936, R. p. 76. Judge Deaver filed on that date a dissenting opinion, R. p. 88, disagreeing with some of the Special Master's findings as

approved by the majority of the court and also some of the additional findings of fact and conclusions of law as made by the majority members of the court.

A final decree was entered November 27, 1936, pursuant to the majority opinion, which found in favor of respondents below all issues of law and fact, denied all prayers of the original bill as amended, and dismissed the bill at the cost of the complainants, R. p. 96.

(b) THE UNDISPUTED FACTS OF THIS CAUSE.

The vast majority of the facts developed by the evidence in this cause are not seriously disputed. It is rather the conclusions, inferences, or deductions from these admitted facts and the application of legal principles to them that form the real bases of this appeal.

Perhaps as clear and concise a statement of the undisputed facts as could be made is found in the findings of fact of the District Court, numbered 1 to 9, inclusive, 11, 12, 14, a part of 15, and 16, which are as follows:

> "1. This suit is brought by the complainants named in the bill. Three of the complainants are corporations, three are individuals doing business under trade names, and sixty-seven are members of thirty partnerships, as set out in the bill.
>
> "2. The defendants described as officers are as named in the bill and hold the official positions therein stated, to-wit: Attorney-General for the State of Georgia, the Solicitors-General of eight judicial circuits, the sheriffs of fifteen counties, and Solicitors of the City Courts of eleven counties of Georgia, and five of the defendants

who are named as sheriffs of their respective counties are also parties defendant as members of the class of growers of leaf tobacco and as representatives of the class of sellers of such tobacco in the warehouses described in the original bill.

"3. In this proceeding the amount and value involved exceeds the sum of three thousand dollars, exclusive of interest and costs. Each of the complainants has more than three thousand dollars involved in the subject matter of this litigation.

"4. Complainants are engaged in the business of handling and selling loose-leaf tobacco in the State of Georgia, and a majority of the complainants have been so engaged for several years. The number of warehouses operated and the number of warehousemen engaged in their operation both vary from year to year.

"5. For many years prior to 1917 the farmers in southern Georgia largely relied upon cotton as their chief money crop. The coming of the boll weevil, however, caused them to seek in tobacco a new source of revenue. Experienced men, called 'demonstrators,' from the Carolinas and other tobacco growing States, were engaged by the Georgia farmers to assist them in the selection of suitable soil and instruct them in the science of growing and curing tobacco. By 1925 the industry was becoming well established and two years later the employment of demonstrators had almost entirely been abandoned.

"The type of tobacco grown in Georgia is the 'bright leaf' and is almost exclusively used in the manufacture of cigarettes. This variety is grown extensively in North Carolina, to a much less extent in South Carolina and Georgia, and to some extent in Virginia, Kentucky and Tennessee.

"From small beginnings in 1917 the cultivation of tobacco has become an important industry. The acreage planted in tobacco by the individual farmer is comparatively small, but on account of the necessity of finding adaptable soil, the aggregate acreage is now not only very considerable but widely distributed over a large area in the southern portion of the State. In 1930 the sales of tobacco through the warehouses in Georgia reached a total of 106,483,019 pounds, and the sales during the tobacco season of 1933 realized the sum of $13,582,912.71.

"6. The necessity for markets and the early maturity of tobacco in Georgia presented an opportunity which was early recognized by skilled and experienced warehousemen operating in the tobacco belts of North Carolina and other States having selling seasons which begin some time after the termination of the selling season in Georgia.

"With few exceptions there are and have been resident in Georgia no competent warehousemen, or skilled and experienced auctioneers, calculators, clip-men, weighers, pay-off men, and similar experienced help to assist warehousemen in handling and selling tobacco at warehouse auction sales.

"In order to sell their tobacco in warehouses located in Georgia, such warehouse must be operated, with possibly few exceptions, by warehousemen from other tobacco States and the warehouseman must employ and bring to Georgia skilled assistants from other tobacco growing States.

"Of the forty-five warehouses operated in 1935, thirty-nine were operated by warehousemen who also operated or were connected in some capacity with the operation of warehouses in North Carolina, Kentucky, Virginia or Tennessee. The South Carolina selling sea-

son opens about ten days later than the Georgia season. The two seasons, therefore, conflict to such extent as to prevent warehousemen and skilled help coming to Georgia from that State.

"7. The principal purchasers of the bright leaf tobacco grown in Georgia and in other States are limited to a few large manufacturers of cigarettes. 'The Companies' they are called by the warehousemen in their testimony. The Companies purchase tobacco only at warehouse auction sales, and only at warehouses to which they send or furnish 'buyers.' Each 'Buyer' is the representative of one of the competing purchasers, a 'set of buyers' usually from eight to twelve in number, is made up of representatives from each of the purchasing cigarette manufacturing companies. The presence of a 'set of buyers' is essential at such auction sale. A town in which is located one or more warehouses is known as a 'market.' If one set of buyers is allotted it is known as a 'one-set market.' The manufacturers by sending a set of buyers to a new warehouse may recognize a new market and by refusing to send one to an old market may cause its abandonment, and by sending either one or two sets of buyers to a given market may determine the rapidity with which the accumulated tobacco may be disposed of at auction.

"Another class of purchasers is known as 'speculators.' On rare occasions, a speculator purchases tobacco from a grower and has it transported to a warehouse for sale. At auction sales, speculators to a comparatively limited extent, in comparison with buyers, purchase tobacco for a later sale.

"8. The tobacco belt comprises approximately twenty counties in the southern portion of the State, and in 1935 contained fifteen towns known as 'markets,' in which were operated forty-five warehouses operated that year by complainants as warehousemen. Seven of the

markets were furnished one set of buyers and eight were furnished two sets. The two-set markets had a total of thirty and the one-set markets a total of fifteen warehouses in operation.

"The number of warehouses operated varies from year to year. In 1931 fifty-one warehouses were operated in twenty-one markets; in 1933 forty-two were operated, and in 1934, thirty-nine. Since 1932 the number of markets has remained at fifteen.

"The quantity of tobacco sold in the warehouses located in the tobacco belt and as well the price received fluctuates from year to year as will appear from the following statement of aggregate sales and average prices for the years 1930 to 1935, inclusive:

Year	*Gross Sales*	*Value*	*Average Price per Pound*
1930	106,483,019 lbs.	$10,501,228.63	9.86 cents
1931	60,881,696 lbs.	3,901,841.66	6.41 cents
1932	12,171,179 lbs.	1,267,211.07	10.40 cents
1933	59,853,963 lbs.	6,764,125.31	11.30 cents
1934	33,623,475 lbs.	6,299,751.96	16.73 cents
1935	71,826,352 lbs.	13,582,912.71	18.91 cents

"9. In the normal and customary course of marketing in Georgia tobacco can only be sold in warehouses located in the tobacco belt of that State.

"11. The Georgia tobacco warehouse Act, approved March 28, 1936, a copy of which may be found herein at page —, prescribed a schedule of maximum commissions and fees which may be lawfully charged by proprietors or persons in charge of warehouses for their services in handling and selling leaf tobacco in warehouses in the State of Georgia. The schedule so prescribed is as follows:

Commissions: Two and one-half per cent (2½%) on gross sales;

Auction Fees: Fifteen cents on all piles of 100 pounds or less; twenty-five cents on all piles over 100 pounds;

Weighing and Handling: Ten cents per pile of 100 pounds or less, and ten cents for each additional 100 pounds.

"Under the statutory maximum schedule of charges the item of commissions, two and one-half per cent, remains the same as in the 'former charges,' or those being made at the time the Act was passed. The reduction of former charges made by the Act is confined to the two items, auction fees and fees for weighing and handling. The percentage reduction is difficult of exact determination because it depends upon the number of the weight of all piles of tobacco handled.

"The said Act of 1935, if enforced, will reduce the amounts (gross income) received by warehousemen for their services under the former schedule of charges by approximately twenty (our figure) per cent.

"The difference in dollars between the amount the complainants would have received for their services in 1935 based upon the former or higher schedule and the amount they would be entitled to receive under the statutory or lower schedule is $115,920.90, the amount deposited in the registry.

"12. There is strenuous and expensive competition between warehousemen in securing tobacco from growers to be handled and sold in their respective warehouses, but in the sale of tobacco there is no competition except such as exists between the respective buyers and speculators at the auction sales and the bids of the warehouseman himself. For their services, the warehousemen throughout the tobacco belt uniformly deduct from the purchase price stated amounts according to their established schedule.

"14. After tobacco has been cured and is ready for the market the grower grades it, as best he can, and the resulting 'piles' of loose leaves are placed in sheets, which are then tied and the tobacco is so transported to the selected warehouse for sale. There the warehouseman and his employees take charge. The tobacco is unloaded, the piles dumped into flat baskets, the sheets removed, the tobacco weighed, and there is placed on the basket a ticket giving the name of the owner and the weight of the pile. The baskets of tobacco are then placed in long parallel rows along the floor of the warehouse.

"Auction sales in a 'market' are held daily during five days of the week, and in a particular warehouse as often as sufficient tobacco accumulates and a set of buyers go to another, but sales usually begin at nine o'clock in the morning. For the reason above stated the number of sale days at a particular warehouse during the selling season is a variable quantity.

"It is essential that there be present, the warehouseman, an auctioneer, and other skilled help who are employed by the warehousemen, and one set of buyers.

"As the informal procession moves along the row each basket of tobacco is offered for sale by the auctioneer and such is the rapidity of movements that sales are made at an average rate of six baskets per minute.

"The warehouseman starts the auction of each basket by making the opening bid. If this is not taken or raised by another, the warehouseman generally becomes the purchaser of the tobacco for his own account. If not sold in this summary fashion, the bidding for the basket continues until its sale is announced by the auctioneer, and a card is dropped on the pile giving the name of the purchaser and the amount of his bid. The grower or other owner, however, has the right to turn down the sale

and this may be accomplished by turning over the card. The grower in such case may hold his tobacco for a later sale or remove it from the warehouse. Immediately after a sale of a lot has been completed the tobacco sold is delivered to the purchaser, who removes it from the floor. It is re-weighed by the purchaser, who, usually several days later, makes payment to the warehouseman, and this is based upon the re-weight of the tobacco, less a small amount for shrinkage. As soon as the sale of a lot is completed the warehouseman pays to the seller the purchase price of the tobacco, less warehouse charges. This payment is made upon the basis of the weight of the tobacco after it reaches the warehouse and before being placed on the floor for sale. While an auction sale is in progress the warehouseman from time to time makes bids for baskets being offered. The purpose of this bidding, as well as of making the opening bid, is to boost the bidding of the buyers and speculators, in an effort to secure for the seller the best price obtainable. The tobacco so purchased as above by the warehouseman is afterwards also sold at auction, and may result in a profit or a loss to the warehouseman, and is shown in his 'leaf account.' References to 'gross sales' in this report are to gross 'first hand' sales and re-sales are not included. During the progress of auction sales a considerable quantity of tobacco leaves are left on the floor. This is known as 'sweepings' or 'scoop,' is sold by the warehouseman and the amount received for it carried into his 'leaf account' where it may reduce the loss shown by that account. The balance shown by that account appears in the warehouseman's statement of income as an added item.

"15. The tobacco selling season in Georgia is from three to five weeks in length. The 1935 season began on the first day of August and closed on the twenty-first day of the same month.

"The tobacco is ready for the market the latter part of July or early in August dependent upon the growing conditions. The exact date for opening the selling season is fixed by the manufacturers of tobacco, who are the principal buyers, and the warehousemen who operate warehouses in the tobacco belt. The exact closing date is fixed by the warehousemen and the buyers at the several markets. . . .

"16. Statutes fixing the same scale of charges as proposed in the Georgia Act of 1935 are the same in North Carolina and South Carolina. The scale of charges heretofore in effect in Georgia is not so high as the non-statutory Tennessee or Kentucky charges. No attack has been made upon the constitutionality of the Carolina statutes."

We do earnestly contend that the findings of fact,—which we consider to be rather inferences, conclusions or deductions, numbered 10, 13, 17 to 23 inclusive, by the District Court, do not find support in this record.

III

ASSIGNMENT OF ERRORS

Appellants rely upon each and all of the errors assigned by them and each of the points made in their Statement of Points to be Relied on, duly filed in accordance with Paragraph 9 of Rule 13 of this Court, R. p. 710. The assignment of errors is found at Record page 101, et seq., and the errors assigned are as follows:

"The statutory District Court erred:

"1. In entering its final decree dated the 27th day of November, A.D. 1936, wherein it ordered, adjudged and decreed 'that all issues of fact and law involved be, and the same are, found in favor of the defendants and against complainants (appellants) as set out in the findings of fact and conclusions of law made and entered by the majority members of the Court' and denying all the prayers of the bill of complaint as amended, and dismissing said bill of complaint as amended, at appellants' cost and vacating the restraining order theretofore granted by said Court in this cause. The said finding is contrary to the evidence, without evidence to support it, and is contrary to law.

"2. In adjudging and finding that:

" '(10) Prior to 1927 the tobacco warehousemen in Georgia for many years, if not from the beginning of the industry, had maintained and exacted from sellers of tobacco a uniform schedule of charges substantially, if not identically, the same as the schedule fixed by the Act of 1935 the validity of which is now being challenged by complainants';

for that said finding of fact is contrary to the evidence and is without evidence to support it.

"3. In adjudging and finding that:

"'(13) By reason of their (appellants) control of the warehouses in which tobacco is sold, in the normal and customary course of marketing in Georgia, the warehousemen have, unless regulated by law, an unduly coercive control over prices charged the growers for services';

for that said finding is contrary to the evidence and is without evidence to support the same.

"4. In adjudging and finding that:

"'(17) The propriety of charging materially or any more for handling tobacco in Georgia than in the Carolinas is not established.'

for that said finding is contrary to the evidence and is without evidence to support the same.

"5. In adjudging and finding that:

"'(19) It is not proven what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the act attacked. It is not denied that some warehousemen (appellants) earned a satisfactory profit. It is not proven that in instances where a loss occurred such loss was not due to excessive competition, ill advised loans, unnecessary expenses in buying influence or hauling customers' tobacco, or other causes than the reduction in charges. The testimony as to the effects of the act attacked is as to the group of warehousemen who are complainants (appellants), rather than to the effect on each one, and even then it is not proven that all the

losses are traceable to the reduction in charges rather than to other causes.'

"Said finding is contrary to the evidence and without evidence to support it; and is contrary to law in that said finding puts on complainants an undue burden of proof.

"6. In adjudging and finding that:

"'(20) The complainants through the warehousemen's Association and their common agreement as to the fees to be charged by them for services rendered maintain and enjoy a virtual monopoly in the field covered by their operations';

for that said finding is contrary to the evidence and without evidence to support it and is contrary to law.

"7. In adjudging and finding that:

"'(21) The business of tobacco warehousemen as conducted in Georgia in the year 1935 and for some years prior thereto was such as to cause it to be "affected with a public interest" and "clothed with a public use."'

"Said finding is contrary to the evidence and without evidence to support it, and is contrary to law.

"8. In adjudging and finding that:

"'(22) The scale of charges prescribed by the said Georgia Act of 1935 is not unreasonable, arbitrary and capricious and is reasonably adapted to accomplish the desired results.'

"Said finding is contrary to the evidence and the Court should have found on the record that the scale of charges prescribed by the said Georgia Act of 1935 is unreasonable,

arbitrary and capricious; that said Act is unreasonable, arbitrary and capricious as it affects and applies to each appellant and as it has affected and applied to each of them at all the times involved in this cause, and that said Act and the enforcement thereof has the effect of depriving each and all the appellants of their respective properties without due process of law, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

"9. In adjudging and finding that:

" '(23) The fixing of a scale of prices for services rendered by the warehousemen does not burden or interfere with interstate commerce.'

"Said finding is assigned as error for that the transactions complained of were each and all in interstate and foreign commerce; that the auction sales of the tobacco in Georgia by the warehousemen and the offering of the tobacco for sale in parcels at said auction sales and the sale and purchase of the same were for shipment out of the State of Georgia in interstate and foreign commerce, and the State of Georgia had no power to fix the maximum charges to be made by appellants who are the owners or operators of said tobacco warehouses for that the fixing of said prices for said services was the fixing and regulating of charges for carrying on interstate and foreign commerce and intercourse in interstate and foreign commerce and was an unlawful burden on such commerce and contrary to the provisions of Article I, Section 8, paragraph 3, of the Constitution of the United States, which is as follows:

'The Congress shall have power . . . To regulate

commerce with foreign nations also with the several States and with Indian tribes,'

upon which appellants rely.

"10. For that the Court erred in its fourth conclusion of law in finding and holding as follows:

" 'As we understand the contention of complainants it is, that because the acts of the warehousemen constitute one step in getting the tobacco to the manufacturers and such manufacturers all, or practically all, reside out of this State and it was known at the time the services were rendered by the warehousemen that the ultimate destination of the tobacco would be out of this State, that such services constituted a part of interstate commerce. We cannot agree with this contention. If sound, logically it would lead us to the conclusion that the very planting and harvesting of tobacco were parts of interstate commerce, for the reason that each of such acts was with the knowledge that all or practically all of the tobacco would ultimately move out of this State.' The court cites *Chasseniel v. Greenwood*, 291 U. S. 584, 587.

"Whereas, the Court should have found on the record and should have held that after the tobacco had been grown, assorted and brought to the warehouses and put in rows, it was offered for sale at auction to the buyers; that those buyers in the instances at hand were non-residents of the State of Georgia and representatives of tobacco manufacturing companies located out of the State of Georgia and in the United States and foreign countries; that the tobacco was delivered upon the close of the auction to those persons for shipment to points of destination out of the State of Georgia and in the United States or foreign countries; that no place of manufacture of tobacco of the kind grown in

Georgia as sold at the warehouses involved is located in the State of Georgia; and the Court should also have found that the sales at these auctions were made in the process of transfer of the tobacco from Georgia in interstate and foreign commerce and that the offering of the tobacco for sale, the bidding thereon and the sale thereof were in fact intercourse in interstate and foreign commerce and the business of tobacco warehousing as carried on by each of appellants is as instrumentality of interstate and foreign commerce and the fixing of the charges to be made by the tobacco warehousemen (appellants in this cause) was a direct burden upon that commerce and upon the actual direct conduct of said commerce, contrary to the provisions of the Constitution of the United States (Article I, Section 8, paragraph 3, of said Constitution, which has been hereinbefore set out)."

IV

SUMMARY OF ARGUMENT

POINT A (page 29)

Findings of fact made by the District Court and numbered 10, 13, 17, 18, 19, 20, 21, 22 and 23 are not lawful and proper findings.

(1) They are contrary to the other findings of the court and the evidence in the record and without evidence to support them.

(2) They are not, in legal contemplation, findings of fact, but are unwarranted inferences or deductions from insufficient, if not non-existent, facts.

(3) These findings, in so far as they are necessary to support the decree of the court, are inadequate and contain no basic intermediate findings essential to the ultimate conclusions therein attempted to be stated.

POINT B (page 69)

The business of tobacco warehouses, as carried on by these appellants in Georgia, in 1935, is not a business subject to regulation by the General Assembly of the State of Georgia with relation to price fixing.

(1) This business under the facts of this case, not contradicted, and as actually conducted in the State of Georgia, is interstate and foreign commerce. There are no tobacco manufacturers, that is, cigarette manufacturers, within the State of Georgia,

and every pound, practically, of Georgia-grown leaf tobacco is shipped to other States or foreign countries so soon as it is sold in appellants' warehouse. The tobacco enters "the stream of commerce" so soon as it is placed on the floor of the warehouse for sale.

(2) The business is an instrumentality of interstate and foreign commerce.

(3) The governmental power to regulate and fix charges, if it exists at all, is in the exclusive domain of the Congress of the United States pursuant to Article I, Section 8, paragraph 3, of the Constitution of the United States. The statute here under consideration contravenes that provision.

(4) The police power of the State of Georgia does not extend so far as to justify the regulation of this business to the point of price fixing. It is not a business which affects the *public* morals, the *public* health or safety, or the *general* welfare. It is not a business "affected with a public interest" and "clothed with a public use." In this aspect, the statute contravenes the provisions of the Fourteenth Amendment of the Constitution of the United States.

POINT C (page 108)

The effect of the statute as upheld by the District Court's decree is to take without compensation their properties and deprive each and every one of appellants of their respective properties, including the value of their services rendered to the growers of tobacco, the right to earn a reasonable return on their investments, and their liberty of contract, all without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

POINT D (page 123)

If it be assumed,—only for the purpose of argument of this point, that the tobacco warehouse business is a "public utility," that is, clothed with a public use and affected with a public interest, the statute here under consideration is violative of the Fourteenth Amendment of the Constitution of the United States in that the police power of the State must not be exercised in an unreasonable, arbitrary or capricious manner.

(1) The statute here involved is not a reasonable exercise of the police power toward "ends" that are "legitimate" and within the scope of the Constitution by "means" selected which are "appropriate and plainly adopted to accomplish these legitimate ends."

(2) The effect of the statute is to unreasonably reduce the income of appellants. The evidence shows that the gross income is reduced to an amount exceeding 20% for 1935, and the net income is reduced in excess of 50%, and in some cases the entire net income is taken away.

(3) The enactment of the statute was an arbitrary and capricious exercise of power. It is not shown and the District Court does not find that the charges heretofore in effect were exorbitant and unreasonable, or that the business was carried on in any fraudulent manner. No evils or persistent, palpable frauds are apparent which the enactment of the statute aimed to cure.

(a) The Legislature made no investigation. The appellants' own witnesses testified that no evidence was presented to that body, no investigation made, nor any report submitted. No hearing was had and no witnesses appeared before the Legislature.

(b) The statute, as a rate order, provides for no hearing and merely fixed a hard and fast scale of charges, with no supervising body. It provides only for a criminal penalty if the mandate is not obeyed.

(c) The Act is plainly discriminatory and is class legislation. It is an effort to regulate and control one business, tobacco warehousing, for the profit and benefit of another business, tobacco growing.

V

ARGUMENT

The District Court's Finding Numbered 23 Is Not Supported By the Evidence.

The District Court majority found:

> "23. The fixing of a scale of prices for services rendered by the warehousemen does not burden or interfere with interstate commerce." R. p. 86.

The exclusive power to *regulate* commerce, interstate and foreign, is in the Congress.

This finding cannot be supported as a fact proved by the evidence. It is an ultimate inference or conclusion based on no basic intermediate findings of fact essential to support it. The court expressly finds as a fact: "The type of tobacco grown in Georgia is the 'bright leaf' and is almost exclusively used in the manufacture of cigarettes." (Finding 5.)

Further, in finding 7, it is held that the principal purchasers of the bright leaf tobacco are limited to a few large manufacturers of cigarettes. R. p. 118.

In the fourth conclusion of law the court recognizes that no manufacturer of cigarettes has a factory in the State of Georgia. This fact cannot be contradicted by any evidence in this record and is not denied by appellees.

The witness Holton B. Wallace is the only witness who testified directly on this point, but the correctness of his

testimony has never been questioned and we believe it to be the truth. As Record page 335 he testifies as follows:

> "Practically all the tobacco grown in Georgia is shipped out of the State; I would say about 40% for export, and the remaining 60% of the Georgia belt is shipped to North Carolina or Virginia to be manufactured. There was a small cigarette plant at Hahira, Georgia; I don't know whether they obtained their raw products in Georgia or not. They did not maintain any buyers on our market, but I understand that is no longer operated. Probably some of the 60% that is domestically consumed would go to Louisville, Kentucky, to the Axton-Fisher Company. They have a buyer in Georgia. Then the Export Tobacco Company, which is primarily an export company, have an American subsidiary, Brown and Wilson of Louisville, Kentucky. They no doubt ship some of their purchases to Louisville. With the exception of the Hahira plant I mentioned, and which I understand is out of business, there is no tobacco consumed in Georgia manufacturing which is bought on the warehouse floors of Georgia; none in Georgia that I know of."

The course of business cannot be disputed. At the places of business of these appellants, "buyers" from the cigarette manufacturing "companies" meet and contract sales with the growers of bright leaf tobacco. So soon as the auctioneer cries off a basket of tobacco to a buyer and the grower affirms the sale, the company-purchaser moves that basket directly to railroad cars or trucks, for transportation to other States and foreign countries, in practically every instance. R. pp. 136, 139, 146, 197, 204, 342, 481.

It is common knowledge that the large cigarette manu-

facturers are the only "companies" consuming Georgia-grown tobacco.

American Tobacco Company—"Lucky Strikes."

P. Lorillard Company—"Old Golds."

R. J. Reynolds—"Camels."

Liggett & Myers—"Chesterfields."

Axton-Fisher Company—"Spuds."

Brown & Williamson Company—"Kools."

These companies are located in Louisville, Kentucky, Richmond, Virginia, and various places in North Carolina.

The Export Tobacco Company, the Imperial Tobacco Company, the British American Tobacco Company, and the China American Tobacco Company are among the principal foreign or export companies buying on the Georgia market. R. pp. 191, 204, 414, 536.

A "set" of buyers is never less than eight and not more than twelve, one from each of the above companies and one or two of the smaller companies in some instances. No one of the manufacturers above named has a plant for the manufacture of cigarettes in the State of Georgia.

It is true that "speculators," "pin hookers," and warehousemen purchase some tobacco at the auction sales, but these in turn have no intention, and no other outlet, than to resell it at the earliest possible moment to the above named cigarette manufacturers. From complainants' exhibits 5, 6,

7 and 8, R. pp. 665, 669, it will be seen that this type of sale is insignificant. For instance, in 1935 "dealers sales" were 2,927,731 pounds of tobacoo, "owners or other warehouse sales" 5,026,388 pounds, out of a total firsthand sales of 71,826,532 pounds. An examination of the other exhibits will show the insignificant amount of tobacco not bought in the first instance by these companies.

As a practical matter, every sale of every pound of Georgia-grown tobacco which passes through the warehouses of appellants is destined for interstate or foreign shipment.

On these facts, which cannot be and are not denied, the interstate character of the transactions and business is fixed and determined. *Lemke v. Farmers Grain Co.*, 258 U. S. 50.

Whether there exists a "burden or interference" with this interstate commerce cannot be ultimately inferred with such basic intermediate findings demanded by the evidence and no findings to the contrary made by the District Court.

If the enactment regulates or results in interference with, obstruction to, or a burden on interstate commerce, however slight, it is beyond State power to so regulate.

But here there is a direct burden, interference with and regulation of this business, this instrumentality of commerce. The "rate" of pay for the service is fixed in a business which is interstate commerce.

In the *Minnesota Rate Cases*, 230 U. S. 352, at 396, Chief Justice Hughes, speaking for the Court, said:

"If a State enactment imposes a direct burden upon

interstate commerce, it must fall regardless of Federal legislation. The point of such objection is not that Congress has acted, but that the State has directly restrained that which in the absence of Federal regulation should be free."

In *Kansas Southern Railway v. Kaw Valley Drainage District*, 233 U. S. 75, Mr. Justice Holmes, at pages 78 and 79, said:

"These judgments must be taken as they read upon their face. They are not conditional orders to raise the bridge if the defendants can obtain the consent of parties not before the court and of one authority at least not subject to its control. They cannot be qualified by speculation as to what is likely to happen in fact. They are out and out orders to remove bridges that are a necessary part of lines of commerce by rail among the States. But that subject-matter is under the exclusive control of Congress and is not one that it has left to the States until there shall be further action on its part. The freedom from interference on the part of the States is not confined to a simple prohibition of laws impairing it, but extends to interference by any ultimate organ. . . .

"The decisions also show that a State cannot avoid the operation of this rule by simply invoking the convenient apologetics of the police power. It repeatedly has been said or implied that a direct interference with commerce among the States could not be justified in this way. 'The state can do nothing which will directly burden or impede the interstate traffic of the company, or impair the usefulness of its facilities for such traffic.' *Illinois Central R. R. Co. v. Illinois*, 163 U. S. 142, 154. *Austin v. Tennessee*, 179 U. S. 343, 349. *Atlantic Coast Line R. R. Co. v. Wharton*, 207 U. S. 328, 334."

In *Lacoste v. Department of Conservation*, 263 U. S. 545, at page 550, Mr. Justice Butler, speaking for the Court, said:

"This Court will determine for itself what is the necessary operation and effect of a state law challenged on the ground that it interferes with or burdens interstate commerce. The name, description or characterization given it by the legislature or the courts of the State will not necessarily control. Regard must be had to the substance of the measure rather than its form. *Looney v. Crane Co.*, 245 U. S. 178, 189, et seq.; *Kansas City, etc. Ry. Co. v. Kansas*, supra, 240 U. S. 227, 231; *St. Louis Southwestern Ry. Co. v. Arkansas*, 235 U. S. 350, 362; *U. S. Express Co. v. Minnesota*, 223 U. S. 335, 346; *Galveston, Harrisburg & San Antonio Ry. Co. v. Texas*, 210 U. S. 217, 227."

The attempt of a State by legislative action to prescribe a scale of rates for services in an interstate business has been held many times to be a direct interference with, burden on and regulation of interstate commerce, and is in fact *regulation.*

In *Missouri v. Kansas Gas Co.*, 265 U. S. 298, Mr. Justice Sutherland, speaking for the Court, at page 308, said:

"The contention that, in the public interest, the business is one requiring regulation, need not be challenged. But Congress thus far has not seen fit to regulate it, and its silence, where it has the sole power to speak, is equivalent to a declaration that that particular commerce shall be free from regulation. See *Robbins v. Shelby County Taxing District*, 120 U. S. 489, 493. With the delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sales and delivery by these companies to their customers at retail is intrastate business and subject to state regulation. *Public Utilities Comm. v. Landon, supra*, (249 U. S. 236, 244-245). In such case the effect on interstate commerce, if there be any, is indirect and incidental. But the sale and delivery here is

an inseparable part of a transaction in interstate commerce—not local but essentially national in character,—and enforcement of a selling price in such a transaction places a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve. It is as though the Commission stood at the state line and imposed its regulation upon the final step in the process at the moment the interstate commodity entered the State and before it had become part of the general mass of property therein. See *Brown v. Houston*, 114 U. S. 622, 634. There is nothing in *Pennsylvania Gas Co. v. Public Service Comm.*, 252 U. S. 23, inconsistent with this view."

A further and more detailed discussion of the authorities is made at a later part of this brief.

THE NATURE OF THE TOBACCO WAREHOUSE BUSINESS.

Tobacco warehousing, as this business is called, is not a storage business, R. pp. 147, 471, 478. It is not a warehouse in the commonly accepted use of that word. It has some of the elements of the business of a factor, broker, or commission merchant. With reference to taxation, this has been held in the case of *Cothran and Connally v. United States*, 276 Fed. 48, affirmed by Circuit Court of Appeals (4th), 283 Fed. 973.

There is no exclusive franchise granted by the State of Georgia or any of its political subdivisions to any one of these appellants to operate his business in a particular locality, R. pp. 275, 392, 486, 536, 252.

The business is more like the stock exchanges, the cotton exchanges, and the grain exchanges of this country. (Compare *Chicago Board of Trade v. Olsen*, 262 U. S. 1). The normal and customary method of dealing in tobacco is through a warehouse like those of appellants, but there is no monopoly in the legal sense of the word in the handling of this agricultural product. It is a convenient place for a grower to find a ready and willing buyer.

It is necessarily as private a business as any business can be which deals with a particular class of individuals. It is not public in the sense that it is a place where any member of the public would go to transact his business. The dealings are exclusively between the growers of tobacco and the buyers of tobacco for the consuming tobacco companies; that is, those companies which manufacture cigarettes. It is just as much a private business as the employment agency, the ice business, the theatre ticket broker, the gasoline distributing business.

See:

Adams v. Tanner, 244 U. S. 590;

Ribnik v. McBride, 277 U. S. 351;

New State Ice Co. v. Liebmann, 285 U. S. 262;

Tyson & Bro. v. Banton, 273 U. S. 418;

Williams v. Standard Oil Co., 278 U. S. 235.

This business is not a "public utility." It is not like a fire insurance company, the dairy business, or the banking business. Each of these named businesses deals with the public as a whole. Every home owner or businessman in the State

may require light, heat, water, transportation or power; so likewise each individual, regardless of his station in life or calling, may require fire insurance, milk, and other daily products, and the service of the money lenders or bankers.

This business in its fundamental arrangement is a place for a willing buyer and a willing seller to meet and contract with reference to the sale of a single commodity, tobacco leaves.

There is no authority to limit the number of tobacco warehouses, except the supply of the tobacco and the demand of the growers for the outlets. Any one is at liberty to open a warehouse, provided he can finance the venture and secure skilled employees. R. pp. 275, 392, 486, 536, 252.

This dissenting opinion of Judge Deaver clearly points this out. R. p. 91.

With this clearly shown by the evidence in the record, the District Court made these findings:

THE FINDINGS NUMBERED 13, 20 AND 21
ARE NOT SUPPORTED BY THE EVIDENCE.

> "13. By reason of their control of the warehouses in which tobacco is sold, in the normal and customary course of marketing in Georgia the warehousemen have, unless regulated by law, an unduly coercive control over prices charged the growers for services."

> "20. Among the warehousemen there has been organized what is known as the Tobacco Warehousemen's Association, of which all complainants in this case are

members. There is no warehouseman in the Georgia market not joined in the instant suit. The prosecution of the suit is an organized fight through the Warehousemen's Association. The growers are not eligible for membership in this Association. The Association and the buyers determine the date the market in Georgia opens and substantially determine the date on which it closes. The Association undertakes to deal with such practices as affect the interest of the members thereof and adopts regulatory rules to be observed by such members. A new member is admitted when he becomes identified with the tobacco warehouse business in Georgia and promises to be governed in his charges by the schedule of fees then in effect throughout the State of Georgia as fixed by the Association.

"On page 94 of the minutes of said Association of a meeting of May 8, 1934, the following entry appears:

" 'The Secretary was requested to read letter of President Brown to Mr. J. C. Lanier requesting that no reduction be made in commissions or charges by the Georgia warehousemen for the year 1934 session. After discussion of the matter it was decided that no changes should be made in charges, but that if any were made it would be higher instead of lower.'

"On page 91 of the minutes of the meeting of the Association of June 8, 1936, appears an entry to the effect that the object of the meeting was explained by W. E. Fenner as being

" 'For the consideration of the bill passed by the Georgia legislature fixing warehouse charges, and a committee was appointed to employ attorneys.'

"On page 90 of the minutes of said Association of a called meeting of June 22, 1935, appears an entry as follows:

" 'Motion was made and carried that an additional assessment of $75.00 per warehouse be made, this to be for employment of attorneys (in this case).'

"On page 89 of the minutes of said Association of a meeting of July 11, 1935, appears an entry as follows:

" 'On motion made and carried small warehouses assessed $85.00 and others $125.00 in making up fund for legal expenses (this case).'

"On page 88 of the minutes of said Association of a meeting of July 30, 1935, appears the following:

" 'Upon motion duly made and carried the President was authorized to appoint at least a half dozen members of the Association to attend the Macon hearing (the interlocutory hearing in this case) and be prepared to give any testimony that might be desired by the court.'

" 'The complainants through the Warehousemen's Association and their common agreement as to the fees to be charged by them for services rendered maintain and enjoy a virtual monopoly in the field covered by their operations.' "

"21. The business of tobacco warehousemen as conducted in Georgia in the year 1935 and for some years prior thereto was such as to cause it to be 'affected with a public interest' and 'clothed with a public use.' "

These findings by the District Court are not supported by the evidence and are contrary to the evidence.

The 13th finding above quoted is not a fact proved by this record. The exercise of "an unduly coercive control over prices" is not apparent, and its relevancy in this investigation is doubtful. Every person has an absolute control over

his estimate of the value of his services; the freedom of contract guarantee in the Federal Constitution recognizes this. The evidence shows that no complaint had ever been made as to charges exacted in 1934, or even in the depression years. Every one of appellants testified to this effect. R. pp. 156, 262, 308, 353, 380, 392, 409. See also 547, 550.

The only denial of this fact was by appellees' witnesses, J. W. Swindle, a member of the House of Representatives of Georgia, who sponsored the bill—his testimony begins at page 464,—and J. Henry Gaskins, a member of the State Senate of Georgia, whose testimony begins at 493. None of the other witnesses for appellees,—and there were many growers of tobacco who appeared, testified to any widespread feeling that the charges heretofore made were unreasonable and exorbitant.

Some of appellants testified that the charges varied but the District Court in its finding held them to be insignificant, R. pp. 172, 188, 376.

If this "control" exists, as was found by the District Court, no effort has been made to exert it, except in the year 1927. Compare Record pp. 332, 528.

The 20th finding is irrelevant and immaterial and is not supported by the evidence in this record. R. p. 197. The Tobacco Warehousemen's Association is not named as a complainant in the original bill or any of its amendments. Many of the named complainants in the bill testified that they were members. They also testified that they were members of the Boards of Trade which exist in each market town. R. pp. 380, 406, 527. Their testimony was that the purpose of the

association was for the same purpose that lawyers organized bar associations, and doctors organized their medical associations. In fact, every calling or occupation has its organization for the purpose of furthering that particular line of business. Whether such organizations exist and whether their purposes are lawful is not the object of this investigation. If the Tobacco Warehousemen's Association is not a proper one, it should be investigated by the proper authorities in a different sort of proceeding from this one. The District Court quotes from minutes of the meetings of the Association. The first quotation in part is from the meeting of May 8, 1934. The entire minutes are found at Record p. 651 and it is apparent from a reading of those minutes that in that year all industry in the United States was organized and organizing under the National Recovery Acts. Many of appellants testified to this. R. pp. 189, 256. The Mr. J. C. Lanier mentioned in those minutes was the Code Administrator for the Tobacco Warehousemen's Code Authority. R. p. 193. This code fixed the charges uniformly at the same scale as was generally charged in Georgia prior to 1934, R. p. 278.

Mr. W. E. Fenner testified that he was on the Code Administration, R. pp. 278, 286, 307; that no objection was raised to the scale as prescribed for Georgia and it was maintained even though the scales for North Carolina and South Carolina were lower. The Code Authority recognized the higher cost of operations in Georgia and the difference in operating conditions there, R. 307.

The statement that a new member is admitted when he becomes identified with the tobacco warehouse business in Georgia and promises to be governed in his charges by the schedule of fees then in effect throughout the State of Geor-

gia as fixed by the association is denied by every witness for appellants, except Holton B. Wallace, R. p. 325. His testimony was only as to himself and on his own statement it is heresay. His operations were confined to one market, Moultrie, Georgia. The testimony of every other warehouseman conflicts with his statement that an agreement to a scale of charges was exacted by the association before a member was admitted. R. pp. 139, 157, 187, 189, 225, 233, 254, 279, 287, 294, 304, 384.

The Warehouse Association does not control the charges made by the appellants, that is, its members in so far as they are appellants in this record. R. pp. 376, 392, 438.

The finding that the business is a "virtual monopoly" and finding 21 that it is a business "affected with a public interest" and "clothed with a public use" is not supported by the evidence and is an ultimate conclusion without basic intermediate findings necessary to support it.

There is no "Anti-Trust" statute in Georgia and there is no constitutional provision making warehouses generally any sort of "public business." The only "Anti-Trust" statute ever on the Georgia statute books was passed in 1896,—Georgia Laws 1896, page 68. This Act was held unconstitutional by the Supreme Court of Georgia in the case of *Brown & Allen v. Jacobs' Pharmacy Co.*, 115 Ga. 429.

As has heretofore been pointed out, the State of Georgia issues no franchise to any one of appellants nor does any subordinate governmental agency. Any one may open and operate a tobacco warehouse. The District Court in its 8th finding recognizes this fact when the specific fact is found

that the number of warehouses and number of market towns have varied from year to year in this State.

Judge Deaver in his dissenting opinion clearly points out that no monopoly can or does exist under the facts in this record. R. p. 90.

The word "monopoly" is derived from the Greek words meaning "alone to sell." It has two concepts—a factual basis and a legal basis. The more common in fact is the geographic monopoly—the wharf owner or ferryman. In the *Munn* case we find what the court there calls a "virtual monopoly", to exist because of the geographic location of the grain elevators; that is, on a narrow strip of land between the lakeside and the railroads.

The factual monopoly immediately and logically leads to the legal concept; that is, a grant or privilege to one person from the sovereign—a franchise, patent or copyright. Monopoly in fact or by law is not of itself objectionable unless it is abused to the point of extortion and fraud.

Here we have no monopoly in fact or law. The warehouses have no natural situation to the exclusion of competitors. Neither the State nor any political subdivision thereof grants an exclusive license or privilege. R. pp. 275, 252, 392, 486, 536. There is no patent on the manner of conducting the business. The undisputed testimony is that any person who chooses may open and operate a warehouse. Membership in the association is no condition precedent. The business has no trade secrets. There is no issue in this case of an illegal combination in restraint of trade under the Anti-Trust Laws, if any. Compare *Sugar Institute v. United States*, 297 U. S. 553.

Charges of monopoly were made, but held to be of no significance in *Williams v. Standard Oil Co.*, 278 U. S. 235. See also *Pacific States Co. v. White*, 296 U. S. at 183.

Whether a business is "affected with a public interest" or "clothed with a public use" is rather a conclusion of law on the facts of each case which show the nature and method of carrying on the business. The nature of this business and the method by which it is carried on are clearly brought out in this record and have been discussed hereinbefore. The legal conclusion we will take up in a discussion of the authorities hereinafter. Page 90-post.

The Findings Numbered 16, 17, 18, 19 and 22 Are Not Supported By the Evidence.

The findings of the District Court with reference to the scale of charges and its effect on the revenues of appellants disregard uncontradicted evidence in the record. They are:

> "10. Beginning with the tobacco selling season of 1927, all warehousemen operating warehouses in Georgia have uniformly maintained, and exacted from sellers, a hard and fast schedule of charges for their services in handling and selling leaf tobacco. There may have been some insignificant exceptions but they were so insignificant as to be immaterial. The schedule of charges so exacted and which was in effect at the time the Georgia tobacco warehouse Act was passed in March, 1935, was based upon three elements, the sale value of tobacco, the number of piles handled, and the weight of the quantity sold, and was as follows:
>
> Commissions: Two and one-half per cent (2½%);
>
> Auction Fees: Twenty-five cents per pile up to and

including 200 pounds; fifty cents per pile above 200 pounds;

Weighing and Handling: Twenty-five cents per pile up to 100 pounds; twenty-five cents for each additional 100 pounds.

"Prior to 1927 the tobacco warehousemen in Georgia for many years, if not from the beginning of the industry, had maintained and exacted from sellers of tobacco a uniform schedule of charges substantially, if not identically, the same as the schedule fixed by the Act of 1935 the validity of which is now being challenged by complainants."

"17. The propriety of charging materially or more for handling tobacco in Georgia than in the Carolinas is not established."

"18. It is not established that the Act attacked was passed without any knowledge on the part of the legislature as to actual conditions under which the business was, and is, being carried on in Georgia."

"19. It is not proven what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the Act attacked. It is not denied that some warehousemen earned a satisfactory profit. It is not proven that in instances where a loss occurred such loss was not due to excessive competition, ill advised loans, unnecessary expenses in buying influence or hauling customers' tobacco or other causes than the reduction in charges. The testimony as to the effects of the Act attacked is as to the group of warehousemen who are complainants, rather than to the effect on each one, and even then it is not proven that all the losses are traceable to the reduction in charges rather than to other causes."

"22. The scale of charges prescribed by the said

Georgia Act of 1935 is not unreasonable, arbitrary and capricious and is reasonably adapted to accomplish the desired results."

These findings are discussed together in that they deal primarily with the scale of charges heretofore made by the warehousemen for their services and the scale prescribed by the statute now under attack.

We point out that none of these findings by the District Court are to the effect that the charges in effect prior to the passage of the Act were unreasonable or exorbitant. The finding of the District Court is merely that the statutory scale is not unreasonable, arbitrary and capricious. Without the basic intermediate finding as to the pre-existing charges we submit that the ultimate conclusion of the court cannot stand.

The 10th finding, in so far as it finds that prior to 1927 there had been a uniform schedule of charges on the same schedule as fixed by the statute, has no evidence to support it in this record.

Many of appellants testied that the charges made in 1934 had been substantially the scale since they had operated in Georgia. The explanation given of how the Georgia scale was arrived at is significant.

Mr. Saunders at Record page 135 testified as follows:

"When I first went there (to Georgia) the warehouse charges were the same as they are now and have always been the same so far as I know, no changes that I have ever known of. The Warehousemen's Association never passed any resolution fixing the warehouse charges in Georgia that I know of. They were using the South

Carolina charges the same as they did last year and they were using them when I first went there so far as I know. The warehousemen haven't maintained the same charges by agreement."

Mr. Smith testified at Record page 172 as follows:

"I have been charging in my warehouse at Valdosta the same warehouse charges ever since I have been in Georgia; I think I have ever since I started in 1919; I won't be certain about that."

Mr. Brown testified at Record page 178:

"For the last fifteen years I have operated in Georgia. The schedule of charges in effect in Georgia have been practically the same that we used last year, except probably in 1921 or 1922 when our charges were different from other charges in the State at least for different types. I mean they were at least different from the Tifton charges."

And again at Record page 188 he explains the difference in charges as far back as 1922, as follows:

"In 1922 I had a schedule of charges and my bookkeeper told me it was different from Tifton and I immediately came up to the level of Tifton. . . . My bookkeeper I think he probably had the Kentucky charges in mind because he worked there and they were put in because I did not pay any attention to it. After operating two or three years he told me he had been talking to the bookkeeper in the warehouse at Tifton and said our charges were different from Tifton. . . . I can't swear that since 1922 every warehouse in South Georgia has been charging the same auction fees and weighing and handling fees and commissions on sales. So far as I know it is true."

See also R. pp. 225, 233, 253, 259, 279, 288, 340, 347, 362, 376, 406, 438.

The cost of operating a tobacco warehouse in Georgia under the facts in this record is clearly shown to be higher than in any other tobacco producing State. The District Court's finding numbered 17 to the contrary has no support from the evidence in this record. It is contrary to other findings and has no basic intermediate findings to support it, and is contrary to the other findings of the court. See page 10 supra.

The Operating Conditions and Circumstances of the Business in Georgia are Substantially Different from other Tobacco Producing States.

Each witness testified that the conditions and circumstances surrounding the tobacco warehouse business, that is, the business of auctioning leaf tobacco in the State of Georgia, are substantially different from those surrounding the same business in those States where tobacco growing has been carried on for generations, to-wit, North Carolina, Kentucky, and Virginia. The first few witnesses for appellants testified as to the conditions in Georgia, as well as the conditions in other sections they operated in. Mr. Saunders operated in Georgia and North Carolina, R. p. 113; Mr. Smith in Georgia and Kentucky, R. p. 170; Mr. Brown in Georgia and Virginia, R. p. 177; Mr. W. W. Bernard and Mr. Park Bernard in Georgia and Tennessee, R. pp. 339, 373. Mr. W. E. Fenner operated in three States, Georgia, North Carolina and Kentucky, R. p. 269. The remaining witnesses in large part substantiated the testimony of these witnesses.

The most pronounced difference is that the tobacco buying companies only allot a short time for buying in the State of Georgia. R. pp. 116, 130, 174, 194, 226, 234, 349. The average production and price is much less than in North Carolina and South Carolina. R. pp. 591, 665, et seq. (Complainants' exhibits 4 to 8, inclusive.) Naturally the tobacco ripens in Georgia earlier than in other sections. Generally the season commences in Georgia around the first of August and continues until the crop is sold, which is not less than two weeks and not more than six weeks. R. pp. 116, 132, 243, 345, 347. The next season chronologically is South Carolina, which commences perhaps a week or ten days later in Georgia and continues for some time longer. Next is the Eastern North Carolina season; then the old belt in North Carolina; the Virginia season; the Kentucky season; Western North Carolina and Tennessee seasons. North Carolina and Virginia are the oldest States producing leaf tobacco and consequently the seasons there are longer than anywhere else. R. pp. 114, 116, 133, 195.

The opening of the markets is determined by the buyers of tobacco primarily. The closing of the season is determined by the buyers and the warehousemen, who agree as to when the time has arrived, after which little or no tobacco can be sold in a community. R. pp. 130, 133, 196, 479, 484, 487.

Prior to 1917 Georgia was essentially a cotton producing State. The scourge of the boll weevil made it necessary to plant a new "money crop." Tobacco growing was encouraged. The Georgia farmers had no experience in this new crop, consequently many families moved into Georgia from

the North Carolina section. A new industry began about this time. There were no native farmers of this State familiar with the planting, cultivating, harvesting, curing and marketing of tobacco. R. pp. 195, 464, 494, 584, 587. There is in Georgia no manufactory which consumes the tobacco produced in this State. It is all bought and shipped out of the State in interstate and foreign commerce. R. p. 335.

The climate in Georgia is more variable from year to year than that of North Carolina and other older tobacco producing areas, as is shown by the fluctuation in production and prices. R. pp. 241, 583. The hot sun of South Georgia in August makes the working conditions in a low large-roofed building very uncomfortable. The hours of labor are long; in many cases three shifts of common labor are employed in twenty-four hours. R. pp. 116, 175. Disease more frequently attacks the plants, which are susceptible not only to disease but to climatic conditions to a very great extent. R. pp. 235, 250, 285, 583.

All of appellants are non-residents of the State of Georgia, with perhaps four or five exceptions. Tobacco warehousemen should not only know how to plant, cultivate and cure tobacco, but must be expert in the grading of it. This skilled group of operators is necessarily from the areas which have produced tobacco for generations. Knowledge of grading is attained only by experience. R. pp. 126, 238. A substantial number of the employees of a tobacco warehouse are trained and skilled men, particularly the auctioneers and assistant sales managers, the persons weighing tobacco, the persons figuring the gross sales of tobacco, called clip and book men. These are all in most cases imported to the Georgia markets. R. pp. 122, 171, 200.

Due to the shortness of the season and the belief among the Georgia growers of tobacco that the first sales bring the highest prices, the crop in Georgia is "rushed" to the markets as soon as the season opens. The rush is on the part of the growers in an effort to have their tobacco sold at the first opportunity. R. pp. 115, 132, 467. This consequently taxes the organization of the warehousemen to the limit and makes for expensive operation. The necessary effect is that all tobacco produced is rapidly sold and the season is short because of this fact. The warehouse cannot close and will not close until all tobacco is sold. If the tobacco is sold at a rapid rate the duration of the season is correspondingly short. A great number of common unskilled laborers is necessary to handle the tobacco, working twenty-four hours a day for five days in the week the larger part of the season. R. pp. 115, 226.

A tobacco warehouse in Georgia is used for very little else during the year. The investment is large. The deterioration and depreciation is rapid, and consequently rents are high where the property is owned by others than the operators. The investment must yield in a short period of time a fair return where the operators own the property. No other commodity raised in Georgia requires the large area of floor space as does a leaf tobacco auction sale. R. pp. 176, 511.

In Georgia there is no practice or regulation requiring the "tying and bundling" of tobacco. This is a practice indulged in in every other tobacco growing area. Georgia is the only State where leaf tobacco is sold "loose." R. pp. 131, 196, 360, 425. In South Carolina this tying and bundling is required by statute (Code of 1932, § 7203). Tying and bundling is accomplished by the grower, who selects from ten

to twenty leaves of tobacco and ties the stems together, making a small bundle. This adds to the attractiveness in display of the tobacco, prevents waste or damage on the floor, and by this process the grading is more carefully done. The greater number of grades a grower displays, the greater the number of piles, and generally the higher the price received for each pile. R. p. 284. The Georgia growers are not as experienced in grading as in other areas, and selling their leaf loose, their piles average much more in weight. The price received is naturally based on the lowest grade of tobacco in that pile.

It would seem apparent that if the custom of statutory requirement of tying and bundling tobacco was in effect in Georgia it would take considerably more time on the grower's part properly to prepare his crop for market. Consequently it would prevent the rushing of the crop to market and the selling season would be longer. Many witnesses testified that in North Carolina and other States the growers preferred to arrange their tobacco in the baskets and unload their own crops, and the warehouseman necessarily employs less unskilled labor in those States than in Georgia. R. pp. 116, 175, 226. In Georgia the contrary is true. From laziness, inexperience or some other cause the growers bring their tobacco to the warehouse and never touch it or have anything to do with it except to get their checks from the warehousemen. R. p. 116.

It is also true that in Georgia the common labor employed in a warehouse is not so efficient as can be found in other tobacco producing areas. The season is short and the opportunity for training labor is consequently less. In other sections where the seasons last longer, common labor has more

opportunity to become trained and efficient and generally is employed from year to year. R. p. 353.

Due to the comparatively short term that tobacco has been grown in commercial quantities in Georgia, the Growers' experience in various phases of planting, cultivating, harvesting and curing tobacco is limited. The solicitation of a grower's business consequently demands a man fully informed in these fields, because he is frequently called upon to advise with the growers with reference to this. While no charge is made by the solicitor for such advice as he may give, his effectiveness in securing business depends on his knowledge and advice to these growers. R. pp. 117, 235, 239. It is to the warehouseman's interest that the growers grade their tobacco properly, and in soliciting business the warehouseman frequently advises the grower and urges him to grade his leaves as closely as possible. R. p. 139.

Due to the fact that skilled labor must be employed from outside of the State, the warehouseman, in order to secure an efficient force, must contract months in advance for his auctioneer, his clip man, his book man, his weigh man, his assistant sales manager, his bookkeeper, and other skilled employees. R. pp. 181, 240. He must estimate the crop in Georgia early in the season and make his commitments without knowing exactly the volume of business he will have or the quality of the tobacco to be offered for sale. These contracts become a fixed charge in the business, and necessarily the wages paid are high because of the fact that this skilled non-resident labor must be paid transportation expense as well as living expenses away from their homes. R. pp. 121, 240.

All witnesses for appellants have testified that banking facilities are more expensive in Georgia than elsewhere. Most of the working capital is borrowed money and the interest rate, without exception, is 8%, while in other places it is never higher than 6%. The banks in Georgia also charge one-fourth of one per cent, that is, $2.50 per thousand dollars, on funds handled through the warehouseman's account. In other sections the exchange rarely exceeds one-tenth or one-eighth of one per cent. In this respect the interest rates are one-third higher and the exchange rates are double. R. pp. 128, 227, 244.

The warehousemen and solicitors begin their work in Georgia soon after the first of each year. They remain in Georgia, or make frequent trips there from their homes, until the first of June. All of them are in the Georgia fields by June 1st, calling on growers and giving what assistance they can with reference to planting, cultivating, harvesting and curing the tobacco. Solicitation through field men, solicitors or drummers is the commonly accepted practice of getting business. Many of the witnesses for appellees testified to this effect. R. p. 227. These field men, when the season actually opens, come into the warehouse and are employed as floor men. They know the growers personally and see that each one is properly looked after when his crop is brought to the warehouse door; they know the common labor and are best able to supervise their work. R. p. 117.

The Value of Properties and Service Devoted to This Business.

The warehouse buildings used for tobacco sales in Georgia are specially constructed for this purpose. Generally they are

wooden frame, a large substantial floor, with galvanized iron sheeting sides, a similar roof or one made of asphalt or asbestos composition. Many windows are required in the sides of the buildings, as well as sky lights in the roof, as good light is necessary for inspecting and grading the tobacco. R. pp. 122, 178.

The area of floor space varies from 15,000 square feet to 60,000 square feet under one roof.

The cost of construction varies according to the type of building, but the upkeep, repairs and depreciation are high. R. pp. 123, 509.

Of the forty-seven warehouses operated in 1935 the following were owned by the operators, and represent the investment:

	Investment	
B. B. Saunders, Valdosta	$38,000.00	R. pp. 123, 127
Waycross Tobacco Warehouse, Waycross	29,387.25	R. p. 208
Growers Warehouse, Douglas	34,500.00	R. p. 223
Vann's Warehouse, Vidalia	58,000.00	R. p. 341
Farmers Warehouse, Hazlehurst	6,000.00	R. p. 352
Planters Warehouse, Hazlehurst	9,000.00	R. p. 352
O. K. Warehouse, Douglas	24,200.00	R. p. 367

Vidalia Tobacco Warehouse, Vidalia	74,000.00	R. p. 380
Hahira Warehouse, Hahira	5,000.00	R. p. 385
Twin Brick Warehouse, Tifton	80,562.52	R. p. 397
Farmers Independent Warehouse, Hahira	14,000.00	R. p. 403
Red Warehouse, Douglas	36,000.00	R. p. 407
Farmers Warehouse, Tifton	36,386.90	R. p. 410
Banner Warehouse, Tifton	42,493.00	R. p. 443

This information is also shown in complainants' exhibit No. 11 (9 and 10). R. pp. 701, 702.

The Hahira warehouse above mentioned is built on rented ground. R. p. 385.

The remaining warehouses are owned by local persons or corporations and rented to the operators. The terms of the rental contracts vary. Some are for a term of years at a flat rate; others are on a percentage or poundage basis, that is, the rent is fixed according to the number of pounds of tobacco sold. R. pp. 149, 176, 177, 344. Generally the charge is a dollar to a dollar and a half per thousand pounds of tobacco sold. The flat rate of rental roughly approximates 10% per year of the cost of the building and equipment. R. pp. 123, 261, 373, 344.

In all cases there is no income, as a practical matter, from the building except the rent paid during the tobacco season. Investment must yield within the selling season a return for the full twelve months of the year.

A large number of employees are used. Mr. Saunders estimated that in all he used one hundred men. The small warehouse required fifteen to twenty employees.

Tobacco warehousing is a skilled occupation. It requires large sums of money in that the operations must be financed to the extent that the warehouseman can issue checks to pay for every pound of tobacco sold in his warehouse in one day. As much as $125,000.00 is paid out in one day in some of the warehouses. R. pp. 143, 149. The business is one of great hazard. The warehouseman is the one protection between the farmer and the consumer of the tobacco, that is, the buyers from the tobacco companies. If the warehouseman does not know the grades of tobacco and open the bidding at a price reasonably commensurate with the grade of tobacco, he will not get the highest prices and, therefore, will eventually lose his patronage. If the warehouseman overbids, he is left with a lot of tobacco on hand in his leaf account and generally sustains a loss in the resale thereof. R. pp. 124, 190, 228. The witness Saunders described this duty and responsibility at Record pp. 118, 124, 146. His testimony is similar to expressions from every warehouseman who testified.

The Effect of the Statute on Appellants' Revenues.

The District Court finds as a fact that the record does not prove what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the Act here under consideration. This finding is indefensible. At Record page 592 it was stipulated that the list of warehouses depositing in the registry of the District Court and the amount of the deposit of each was correct. These deposits are the difference in the revenue received under the old scale of charges and the statutory scale. For the season 1935 it amounted to a total of $115,920.90. Each warehouseman testified as to his operations at least for the year 1935 and gave as a fact the loss in revenue caused by the reduction in charges. R. pp. 150, 156, 259, 355.

A general picture of the income, expenses and earnings of these appellants can best be obtained from complainants' exhibits 10 to 15, inclusive. R. pp. 671-706.

Appellants' witness Gardner compiled these exhibits and testified at Record p. 453. Many of appellants did not operate prior to 1935 or operated in different warehouses, but for the season 1935 these exhibits show conclusively the effect of this statute on the revenues of appellants.

Complainants' exhibit No. 10 (1-4) R. pp. 673-676, reflects the testimony concerning only twenty-seven warehouses which were operated by some of appellants in the 1931 season. The production in that year was over sixty million pounds of tobacco, but the price average only 6.41 cents per pound, the lowest average ever raised in Georgia. (Defend-

ants' exhibit No. 6, R. p. 654.) That exhibit shows a combined net income of $43,399.04. See also complainants' exhibit No. 13, R. p. 705. This does not reflect any allowance in the expenses of a salary to the operators of the businesses for their personal services or any depreciation or return on their investments. It averages less than $2,000.00 income per warehouse for 1931.

Exhibit 10 (5-7) R. pp. 677-680, shows twenty-five warehouses operating in 1932. The combined net result is a loss of $14,573.35. The crop was only twelve million pounds, due to a disastrous disease called the "Blue Mold" which attacked the plants in the seed beds. The price average was only 10.41 cents per pound. The average loss per warehouse operating was $500.00, without any expenses included for salaries, depreciation, or return on investment.

Exhibit No. 10 (8-12), R. pp. 681-684, shows twenty-nine warehouses operating in 1933. The total earnings, before deductions for salaries to the operators, depreciation, or return on investment, were $104,304.01. This divided among the warehouses shows an average income of $3,600.00 for that year. The yield was sixty million pounds and the average price 11.30 cents per pound.

Exhibit No. 10 (13-16), R. pp. 685-688, reflects the 1934 operations of thirty-three warehouses. The combined earnings, without deductions for salaries, depreciation, return on investment, amounted to $89,317.95, or an average of $2,700.00 per warehouse. The yield in 1934, which was the first year of Federal crop restriction, was only thirty-three and one-half million pounds, but the price averaged 18.73 cents per pound.

Exhibit No. 10 (17-20), R. pp. 689-692, gives a complete picture of the 1935 operations. The exhibit analyzes only forty-five of the forty-seven warehouses, as Mr. Gardner, the witness, did not have before him the testimony of Mr. H. B. Wallace. R. p. 318. The combined income, excluding Mr. Wallace's warehouse, was $246,438.98, the best year as to volume of the crop and average price in the last six years. R. pp. 202, 584. The average income divided among the warehouses was $5,600.00, without deduction for salaries, depreciation or return on investment. The production was seventy-two million pounds and the average price was 18.91 cents per pound, the highest average in eight years.

The average earnings, therefore, of each warehouse analyzed for the last five years is only $2,600.00, to be divided, in every instance practically, between at least two partners, in some instances more, and this without deduction or charge against the earnings for the time, skill and experience of the operator, depreciation on equipment or property or return on investment.

Mr. Gardner's study or analysis of these warehouses for the period 1931 to 1935 in detail is in the record as complainants' exhibit No. 11, R. pp. 693-702, two sheets for each year. The tonnage each warehouse sold is given and the value of the tobacco sold is stated. See complainants' exhibits 4, 5, 6, 7 and 8, R. pp. 665-669.

The returns for this arduous and hazardous business are not large and they are a variable figure from year to year. The reward depends on the poundage sold in each warehouse, as well as the price of tobacco. The quantity or quality of

the crop cannot be controlled effectively. R. pp. 583, 260, 280.

The commissions, auction fees and weighing fees constitute the main income to a warehouse. The only other source of income available is from the "leaf account." This account represents the purchase of tobacco on auction by the warehouseman in his effort to keep the buyers bidding in line with the grade of tobacco offered for sale. Normally the resale of such purchased tobacco is at a loss if the warehouse is not extremely fortunate. It is one of the hazards of the business. He must continually "push" the price, and often as the season progresses the price declines as the buyers fill the quotas allotted to them by their companies. R. pp. 118, 126, 190, 228.

Through this "leaf account" most operators clear their sales of "scrap" or "waste tobacco" — "sweepings." In Georgia the tobacco is sold "loose leaf," consequently much of it falls off the baskets and is stepped on or otherwise damaged. This waste or sweepings has a market value, but the amount received for it is credited to the leaf account to offset the customary loss there. R. pp. 126, 191, 204. This is not a profit to the warehouse, as the grower is paid on the initial weight of his tobacco when it is first brought to the warehouse. The grower does not suffer one cent. R. pp. 203, 315. The warehouseman frequently is charged for this loss in weight by the tobacco company if any serious shortage appears. R. pp. 256, 265, 315.

The Evidence Shows That the Statutory Schedule of Charges, If Put Into Effect, Is so Unreasonable as to Approach Confiscation of Appellants' Businesses.

The actual investment in tobacco warehouses in Georgia totals a large sum. The warehouses of appellants, owned by them, represent an investment of approximately $500,000.00. If the value of the rented warehouses is capitalized at 10%, they amount to in excess of $1,000,000.00. The equipment required is of a kind that can only be used in the tobacco warehouse business, and represents a substantial investment. The net income under the statutory charges for 1935, $130,624.62, (complainants' exhibit 13, R. p. 705) and on the amount invested in warehouses alone the return is less than 10% for the best season in Georgia. The amount of cash capital required to finance each season's sales is enormous. The various operators have testified to the amount of cash required and the amount of their borrowings from the banks and individuals. One witness testified that he incurred liabilities for a season's financing in excess of $140,000.00, although probably $50,000.00 represents the average borrowings per season. No single operator is able to finance his business. Credit is a vital element.

Before the actual return on the amount invested can be figured it is necessary to determine the fair expense allocable to the salary of a warehouseman for running the business, for his time, skill and experience in the actual carrying on of a tobacco auction. Fortunately some of these operations are so conducted as to reflect plainly what is actually being paid for this personal service.

At Blackshear, Georgia, in the Brantley Warehouse, R. p. 418, it is testified that Mr. Brantley owned the building and financed the operations for the 1934 and 1935 season. Mr. Sanford, the witness, supplied the skill and experience. In 1934 Mr. Sanford received one-fourth of a net profit of $1,528.12 for his services. In 1935 his earnings were one-half of $5,248.08 on the basis of the old scale of charges and one-half of $2,680.25 on the basis of the statutory scale.

At Tifton there are two warehouses operated by a corporation, the Tifton Investment Company. They are the Farmers Warehouse and the Twin Brick Warehouse. R. pp. 395, 410. Of necessity the corporation hires experienced warehousemen to conduct the operations. These men are from Virginia and North Carolina and work on a salary plus a commission, with no responsibility for losses.

Mr. A. W. Jeffreys operated the Farmers Warehouse, R. p. 410. (Complainants' exhibit No. 3, R. p. 614.) He testified that his salary was $1,500.00 per season plus commissions of 7½ cents on each hundred pounds of tobacco sold. He further testified that he received the following amounts:

1935 season	$2,996.64
1934 season	3,122.46
1933 season	3,500.00
1932 season	1,107.45
1931 season	2,996.97
1930 season	3,851.53

(R. pp. 616-622.)

Mr. W. W. Winstead testified that he ran the sale in the Twin Brick Warehouse, R. p. 395 (complainants' exhibit

No. 2, R. p. 605). His salary was likewise $1,500.00, with a similar commission. His earnings were:

1935 season	$3,000.00
1934 season	3,122.46
1933 season	3,500.00
1932 season	1,107.45
1931 season	3,932.67
1930 season	4,479.74

(R. pp. 608-673)

These figures are actual outlays by successful managements for the time, skill and experience of a tobacco warehouseman. The Tifton Investment Company is one of the largest tobacco warehouse operators in Georgia.

It is apparent from the testimony of these two witnesses that the Tifton Investment Company's investment in the two properties, amounting to $116,949.42, (complainants' exhibits 2 and 3, R. pp. 605 and 614) has in the last six seasons obtained a return on their investment of less than 5% per season. If the witness Gardner's studies of this business are correct (complainants' exhibits 10-15, R. pp. 671-706), the reduction in income for the six-year period would average more than 20% under the new scale of charges prescribed by the Act. This would reduce the Tifton Investment Company's return to less than 4% per year on their investment.

From the evidence in this record we believe that an amount fairly representing a salary to the warehouseman operating a business can best be stated in terms of the poundage sold. We believe that it can be fairly said that $1,000.00 per million pounds of tobacco sold is a minimum salary for an ex-

perienced warehouseman. R. pp. 127, 182, 347, 358, 276. If a corresponding expense item were charged against the earnings testified to by the warehousemen, their earnings would be substantially decreased from the figures stated in this record. Compare Saunders' testimony, R. p, 154, Lyddane's testimony, R. p. 209, Strickland's testimony, R. p. 242.

The effect of the statute on appellants' businesses is vividly shown in the additional studies made by the witness Gardner. (Complainants' exhibits 12, 13 and 14), R. pp. 703-706.

Exhibit 12, R. p. 703, gives twenty-six warehousemen's testimony, reflecting their 1935 operations. The number of pounds sold in each warehouse is stated; the value of the tobacco sold is also given; next is the amount testified to as the total income from all charges, including commissions, auction and weighing fees; next is a computation of the commission, that is, 2½% of the value of the tobacco sold, as shown in column 2. This figure deducted from the total commissions, column 3, gives the amount necessarily collected as weighing and auction fees, column 4. The last figure, column 5, is the amount deposited with the court, which is the difference between the weighing and auction fees charged under the old scale, and those provided for in the scale contained in the Act of the Legislature here under consideration.

The total number of pounds sold by the warehouses whose operations are testified to, divided into the total sum of the amounts in column 5, gives a reduction of $1.54927 per thousand pounds of tobacco sold. (Complainants' exhibit No. 12), R. p. 703.

A figure not so exact may be obtained by dividing the total Georgia production, first hand and dealers' sales, 74,-

754,083 pounds (complainants' exhibit No. 8) R. p. 669, into the total amount on deposit with the court, $115,920.90. R. p. 593. The result of this division gives a reduction per 1,000 pounds of $1.5506. This is also a check on Mr. Gardner's figure.

Complainants' exhibit No. 13, R. p. 705, is a compilation of the figures from the preceding exhibits 10 to 12, inclusive, together with the application of the figures in column 6 of the exhibit derived from the computation shown in exhibit 14 hereinafter discussed. This exhibit No. 13 presents the effect of the reduction provided for in the statutory scale on the income or charges of the warehouse in the previous years, to-wit, 1931 to 1935, inclusive.

Complainants' exhibit No. 14, R. p. 706, is a computation to determine the effect of the statutory reduction on income for the preceding years, 1931 to 1935, using as a basis the $1.54927 per thousand pounds sold. Column 1 is the tonnage for each year, the total of first hand and dealers' sales. (Complainants' exhibits Nos. 4, 5, 6, 7 and 8) R. pp. 665-669. Column 2 is the value of the crops. (Complainants' exhibits Nos. 4, 5, 6, 7, and 8.) Column 3 states the 2½% commission figures on the valuation expressed in column 2, and weighing and auction fees. Column 4 is the total fees or income for each year, being the sum of the two items in column 3. Column 5 is the effect on weighing and auction fees by reason of a reduction of $1.54927 per thousand pounds of tobacco sold. Column 6 is this reduction expressed in percentage. The exhibit shows that the average reduction in gross income to the warehousemen testifying, over the period from 1931 to 1935, inclusive, is approximately 20%. This study should be compared with the amounts on deposit with

the court, R. p. 592, for each warehouse, and the exhibit 10 (17-20) R. pp. 689-692. From examination of these figures it will be seen that a 50% reduction in net income is brought about by the statutory scale of charges. An interesting check on the witness Gardner's accuracy is shown by the figure for 1935 in exhibit 14, column 5, R. p. 705. His computation shows that the difference in charges amounted to $115,-814.36, while the clerk's report of the amount actually on deposit, R. p. 592, is $115,920.90.

Complainants' exhibit No. 15, R. p. 706, emphasizes the tremendous effect that the price per pound of tobacco has on the warehouse earnings. The witness Gardner, R. p. 457, testified that had the average price for tobacco during the 1935 season been the average price for the last twelve years, 14.90 cents per hundred, the reduction in commissions alone would have been $71,826.35. The average price for the past six years has been only 12.27 cents per pound and the average price for the entire time tobacco has been grown in Georgia commercially, eighteen years, is only 15.91 cents per pound. R. p. 457.

The apparent and undeniable fact is that the reduction in earnings of appellants made by the statutory scale is on its face unreasonable, arbitrary and capricious. Each of the appellants who testified stated that had the same scale of charges been in force for the preceding years their losses would have been tremendous. They further testified that should this scale apply in Georgia most of them would be compelled to go out of business. Mr. Saunders, at R. p. 156, expressed it as follows:

> "I don't know whether there is any warehouse in Georgia that sold more poundage this year than mine.

. . . I am positive that maybe with the exception of one year I have led for seven or eight years. The charges that we have charged up until this year have in my opinion been as little as a man could stay in business in Georgia on and charge. If we had to charge any less than that I think you could bid us all farewell because you can't operate and do it. When one takes a period of five years and goes back he will see."

Mr. W. E. Fenner, at R. p. 279, testified:

"From my experience as a warehouseman in Georgia, Kentucky and North Carolina I think the scale of charges heretofore charged in Georgia is reasonable. In my operations in Georgia for 1935 the difference in amount of money between the old charges and the charges passed by the Act of the Georgia Legislature is $4,296.98. I think that amount figures around 18% of my gross income, or something like that. I would not say positively. The net income there shows that it would be practically one-half. . . . If the scale of charges passed by the Legislature had been charged by me in the years previous to the year 1935, I think instead of showing a profit each year I would in all probability have shown a loss or certainly would have had a small profit, if any at all."

Mr. Pruitt, at R. p. 358, testified to the same effect.

Defendants' own witness, R. E. Currin, at R. p. 335, on cross examination testified:

"From my observation, the forty-four warehouses in Georgia operating for the last year or two have not made any money under the present charges. They could not make money under the scale passed by the Legislature. I would not have a house here."

Mr. Currin was formerly in the warehouse business until he met with financial reverses.

THE GENERAL ASSEMBLY OF GEORGIA IS WITHOUT POWER TO ENACT THE STATUTE

The Transactions Regulated Are in, and the Business Is an Instrumentality of, Interstate and Foreign Commerce.

The course of business as carried on by these appellants in Georgia fixes and determines the interstate and foreign character of the transactions.

The concept of interstate and foreign commerce has been one of constant growth as the commerce of this country has expanded. The exclusive control of such commerce by the Congress of the United States has always been upheld where the impact of State regulatory statutes directly affects this subject.

The evidence in this cause shows, without contradiction, that all the tobacco sold in appellants' warehouses is sold and sent out of the State of Georgia in interstate and foreign commerce to be manufactured into finished products, cigarettes, and the finished products sold to the public. The evidence shows, without contradiction, that there is no cigarette manufactory in the State of Georgia in which the leaf tobacco handled and sold by the appellants in their warehouses can be manufactured into finished products. R. p. 335. The result necessarily is that all of the leaf tobacco goes into States where there are such factories, such as North Carolina, Virginia and Kentucky, and foreign countries. This "stream" or "flow" of commerce continues without any intermediate handling as a practical matter. The buyers of

the leaf tobacco are persons who live without the State of Georgia and who come into the State and to these sales at appellants' warehouses for the sole purpose of buying the tobacco, with no intent other than to ship it immediately outside of the State to factories for the purpose of manufacturing it into a salable product.

There are many decisions by this Court on this subject. We call attention to a few of them.

Lemke, as Attorney General of the State of North Dakota, et al, v. Farmers Grain Co. of Embden, N. D., reported in 258 U. S. 50, is a leading case. This decision originated in a suit brought by a co-operative association incorporated under the laws of North Dakota and engaged in the business of operating a public elevator and warehouse for the purchase, sale, distribution and storage of wheat, oats, rye, etc. The purpose of the suit was to enjoin enforcement of the North Dakota Grain Grading and Inspection Act, passed February 11, 1919. The bill of complaint was based upon two grounds: First, that the statute was an unlawful regulation of and burden upon interstate commerce and, therefore, violated the commerce clause of the Federal Constitution; and, second, that the State statute was in conflict with the Federal Grain Standards Act of August 11, 1916. This Court states:

> "The record disclosed that North Dakota is a great grain-growing State, producing annually large crops, particularly wheat, for transportation beyond its borders. Complainant, and other buyers of like character, are owners of elevators and purchasers of grain bought in North Dakota, to be shipped to and sold at terminal markets in other States, the principal markets being at

Minneapolis and Duluth. There is practically no market in North Dakota for the grain purchased by complainant. The Minneapolis prices are received at the elevator of the complainant from Minneapolis four times daily, and are posted for the information of those interested. To these figures the buyer adds the freight and his 'spread,' or margin, of profit. The purchases are generally made with the intention of shipping the gain to Minneapolis. The grain is placed in the elevator for shipment, and loaded at once upon cars for shipment to Minneapolis and elsewhere outside the State of North Dakota. The producers know the basis upon which the grain is bought, but whoever pays the highest price gets the grain,—Minneapolis, Duluth, or elsewhere. This method of purchasing, shipment, and sale is the general and usual course of business in the grain trade at the elevator of complainant and others similarly situated. The market for grain bought at Embden is outside the State of North Dakota, and it is an unusual thing to get an offer from a point within the State. After the grain is loaded upon the cars, it is generally consigned to a commission merchant at Minneapolis. At the terminal market, the grain is inspected and graded by inspectors licensed under Federal law."

With very little difference in language, the above would describe the business which is conducted by the appellants in the case at bar.

This Court says in the Lemke case:

"That such course of dealing constituted interstate commerce, there can be no question. This court has so held in many cases, and we have had occasion to discuss and decide the nature of such commerce in a case closely analogous in its facts, and altogether so in principle."

This Court refers to *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, in which case the facts disclose that a company organized in Tennessee, and carrying on business there, went into Kentucky, and, through an agent there bought wheat for shipment to the company's mill in Tennessee. The State Court held that the transaction was merely a purchase of wheat in Kentucky, and made the Tennessee company amenable to the regulatory statutes of the State. This Court rejected the conclusion of the State court, and held that the buying, no less than the selling, of the grain, under such circumstances, was a part of interstate commerce, committed to national control by the Federal Constitution.

This Court in the Lemke case concludes its opinion with this statement:

> "We agree with the Circuit Court of Appeals that this legislation is beyond the power of the State, as it is a regulation of interstate commerce when applied to complainant's business."

There was a dissent in the Lemke case, but the dissent does not deny that the transactions were interstate commerce.

Selling and Buying Constitute A Part of Interstate Commerce.

This subject is treated in the Lemke case at page 55, where this Court, in discussing other cases, states:

> "None of them indicates, much less decides, that interstate commerce does not include the buying and selling of products for shipment beyond State lines. It is true, as appellants contend, that after the wheat was

delivered at complainant's elevator, or loaded on the cars for shipment, it might have been diverted to a local market or sent to a local mill. But such was not the course of business. The testimony shows that practically all the wheat purchased by the complainant was for shipment to and sale in, the Minneapolis market. That was the course of business, and fixed and determined the interstate character of the transactions."

See *Swift & Co. v. United States*, 196 U. S. 375, 398, 399.

Dahnke-Walker Co. v. Bondurant, 257 U. S. 282, at 290, deals specially with this subject. We quote from it as follows:

"The commerce clause of the Constitution, Art. I, §8, cl. 3, expressly commits to Congress and impliedly withholds from the several States the power to regulate commerce among the latter. *Such commerce is not confined to transportation from one State to another, but comprehends all commercial intercourse between different States and all the component parts of that intercourse.* Where goods in one State are transported into another for purposes of sale the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages. *Brown v. Maryland*, 12 Wheat. 419, 446-447; *American Steel & Wire Co. v. Speed*, 192 U. S. 500, 519. On the same principle, *where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation. American Express Co. v. Iowa*, 196 U. S. 133, 143. This has been recognized in many decisions construing the commerce clause. Thus it was said in *Welton v. Missouri*, 91 U. S. 275, 280: 'Commerce is a term of the largest import. *It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities.*' In *Kidd*

v. Pearson, 128 U. S. 1, 20, it was tersely said: 'Buying and selling and the transportation incidental thereto constitute commerce.' In *United States v. E. C. Knight Co.*, 156 U. S. 1, 13, 'contracts to buy, sell, or exchange goods to be transported among the several States' were declared 'part of interstate trade of commerce.' And in *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 241, the court referred to the prior decisions as establishing that 'interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities.' In no case has the court made any distinction between buying and selling or between buying for transportation to another State and transporting for sale in another State. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling it was not material whether it came first or last.

"A corporation of one State may go into another, without obtaining the leave or license of the latter, for all the legitimate purposes of such commerce; *and any statute of the latter State which obstructs or lays a burden on the exercise of this privilege is void under the commerce clause. Crutcher v. Kentucky*, 141 U. S. 47, 57; *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 27; *International Textbook Co. v. Pigg*, 217 U. S. 91, 112; *Sioux Remedy Co. v. Cope*, 235 U. S. 197."
(Italics ours.)

See *The Pipe Line Cases*, 234 U. S. 548, 560.

The State of North Dakota adopted another law in 1923 which undertook to cure the trouble which had been pointed out in the law involved in the Lemke case, 258 U. S. A case

grew then out of this latter law and is reported as *Shafer v. Farmers Grain Co. of Embden, et al*, 268 U. S. 189. In that case this Court adhered to its rulings made in the Lemke case and held that the differences between the two laws were not sufficient. At page 198 the Court said:

> "Buying for shipment, and shipping, to markets in other States when conducted as before shown constitutes interstate commerce—the buying being as much a part of it as the shipping. We so held in *Lemke v. Farmers Grain Company*, supra, following and applying the principle of prior cases. Later cases have given effect to the same principle."

The opinion cites *Stafford v. Wallace*, 258 U. S. 495, 516, and *Binderup v. Pathe Exchange*, 263 U. S. 291, 309, and continues:

> "Wheat—both with and without dockage—is a legitimate article of commerce and the subject of dealings that are nation-wide. The right to buy it for shipment, and to ship it, in interstate commerce is not a privilege derived from State laws and which they may fetter with conditions, but is a common right, the regulation of which is committed to Congress and denied to the States by the commerce clause of the Constitution."

This Court to sustain this last position cites a number of cases, some of which have been heretofore referred to. The cases cited are: *Crutcher v. Kentucky*, 141 U. S. 47, 57; *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 21; *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229, 260; *Buck Stove Co. v. Vickers*, 226 U. S. 205, 215; *Adams Express Co. v. New York*, 232 U. S. 14, 31; *Dahnke-Walker Co. v. Bondurant*, 257 U. S. 282, 291, 292.

The case of *Binderup v. Pathe Exchange*, 263 U. S. 291, beginning at page 309, is of very great interest. It deals with the transportation of films from New York to Nebraska to be shown there and then sent to various destinations. This case cites a great many cases, and discusses the interstate commerce feature of the transportation of the films at considerable length.

The same may be said of *Stafford v. Wallace*, 258 U. S. 495. We quote from the third headnote as follows:

> "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business."

and that in turn is quoted from *Swift & Co. v. United States*, 196 U. S. 375, 399.

In *Carter v. Carter Coal Co.*, 298 U. S. 238, the "Guffy Act" was held unconstitutional, but this Court's opinion goes into the question of what is interstate commerce, and when a commodity may be said to have become a part of interstate commerce. At page 303 it is said:

> "Commerce in the coal mined is not brought into being by force of these activities, but by negotiations, agreements, and circumstances entirely apart from production. Mining brings the subject matter of commerce into existence; commerce disposed of it."

If this principle be applied to this case, we have a situation where the growing and curing of tobacco corresponds to the mining of coal, but the auction sale thereof, in the warehouse, is clearly commerce. The disposition of the tobacco, by reason of the unique situation in Georgia, is not possible to be other than across State lines.

The *Carter* case must now be considered in connection with the National Labor Board cases, decided April 12, 1937. In these late cases this Court held the Carter case not controlling, but the decisions show that interstate intercourse may begin with production rather than *sale* and *shipment*. The Labor Board cases are certainly an extension of the conception of interstate commerce as heretofore expressed in the decisions.

There is a "flow of commerce" here. As said in the *Carter* case, at page 306:

> "In the Schechter case (295 U. S. 495), the flow had ceased. Here (the Carter case) it had not begun. The difference is not one of substance. The applicable principle is the same."

The case at bar is one where growth, culture and production of tobacco is ended. As soon as the tobacco crosses the warehouse threshold certainly it then joins the flow of commerce, if not before that point, which continues until it reaches the buyer's storage house or manufactory, in other States and foreign countries, where the production of cigarettes begins, and a new cycle commences.

In 1893 this Court decided the case of *Covington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S. 204. The majority there held that the State of Kentucky could not legislate to the extent of fixing the tolls to be charged by the Bridge Company which owned the bridge over the Ohio River connecting the State of Kentucky with the State of Ohio. In the headnotes the majority opinion held:

> "1. That the traffic across the river was interstate commerce;

"2. That the bridge was an instrumentality of interstate commerce;

"3. That the statute was an attempted regulation of such commerce which the State had no constitutional power to make."

The majority opinion held that the regulation of these tolls by the State was a burden on the interstate commerce. Certainly, in the case at bar, the warehouses of these appellants are very similar to the bridge in the Covington case. It is over this bridge, that is, through these warehouses, that every pound of tobacco produced in Georgia passes on the trip from the fields to the manufacturing plants located in other States and foreign countries. The Act of the Georgia Legislature, fixing the charges of these warehouses, is in effect regulating the "tolls" charged for use of this "bridge."

Warehousing is not manufacturing or production, but it is certainly the disposition of the tobacco, and the gateway through which interstate commerce flows.

We feel that we can certainly say that the sale of leaf tobacco involved in the case at bar to be shipped to other States in interstate commerce is a part of the "current of commerce among the States." At page 518 of the Stafford case this Court states, in reference to the cattle about to be shipped, that "the purchase of the cattle is a part and incident of such commerce."

In the Binderup case this Court quotes from the *Stafford v. Wallace* case, and then states:

"The transactions here are essentially the same as those involved in the foregoing cases, substituting the

word 'film' for the word 'livestock,' or 'cattle,' or 'meat.' Whatever difference exists is of degree and not in character." (p. 131.)

Suppose we substitute for the word "film," or for the word "livestock," or "cattle," or "meat," the word "tobacco"; we are obliged to answer that it appears to us these cases are controlling.

The cases of *Federal Compress Co. v. McLean*, 291 U. S. 17, and *Chassaniol v. Greenwood*, 291 U. S. 584, are not inconsistent with the position here taken. In fact the cases here relied on, *Dahnke-Walker Milling Co. v. Bondurant* and *Lemke v. Farmers Grain Co.*, supra, are cited in these two opinions and held to stand on a different footing.

The District Court in its opinion cites only the Chassaniol case, but this Court there says, at page 587:

> "Ginning Cotton, transporting it to Greenwood, and warehousing, buying and compressing it there, are each, like the growing of it, steps in the *preparation for the sale and shipment* in interstate or foreign commerce. But each step *prior to the sale and shipment* is a transaction local to Mississippi, a transaction in intrastate commerce."

In the case at bar it cannot be denied that the "sale" made in appellants' warehouses, the charges for which are sought to be regulated by the statute under attack, is to non-resident buyers and immediately the shipment goes forward, in practically every instance in interstate and foreign commerce to the buyers' factories in Kentucky, North Carolina, Virginia, other States, and abroad. The "sale and shipment" spoken of by Justice Brandeis in the above quoted opinion is the

business of these appellants. Their warehouses are all located on or near railroad sidetracks for this purpose. R. pp. 136, 139, 146.

Mr. W. W. Bernard testified, R. p. 342, as follows:

> "But in Georgia they take it out to the box cars; then the cars are placed, they are usually right outside the warehouse on the warehouse sidetrack."

See also R. pp. 481, 519.

The case of *Pennsylvania v. West Virginia*, 262 U. S. 553, is very important. The State of West Virginia, in a large part, but not in all, of its territory produces natural gas. It adopted an enactment requiring the withdrawing of natural gas from what the court calls "an established current of commerce" moving from the territory of West Virginia into the State of Pennsylvania and other States. The State of Ohio brought a like suit. The Act (Chapter 71, Acts 1919) undertook to compel retention within West Virginia of natural gas there produced that might be required for local needs. This Court held that the plaintiff had the right to bring the action. The fourth through the ninth headnotes of the case are as follows, and are fully discussed at the respective pages of the opinion:

> "4. A State wherein natural gas is produced and is a recognized subject of commercial dealings may not require of those producing and transporting it that, in its sale and disposal, consumers in that State shall be accorded a preferred right of purchase over consumers in other States, when the requirement necessarily will operate to withdraw a large volume of the gas from an established interstate current whereby it is supplied in other States, to consumers there. P. 595.

"5. The purpose of the Commerce Clause is to protect commercial intercourse from invidious restraints, to prevent interference through conflicting or hostile state laws, and to insure uniformity of regulation. It means, that, in the matter of interstate commerce, we are a single Nation—one and the same people. P. 596.

"6. The transmission of natural gas from one State to another, for sale and consumption in the latter, is interstate commerce, and a state law, whether of the State where the gas is produced or of that where it is to be sold, which by its necessary operation prevents, obstructs or burdens such transmission, is a regulation of interstate commerce—a prohibited interference. P. 596.

"7. The power of a State to require gas pipe-line companies to furnish reasonably adequate service within reasonable territorial limits, will not enable her to enforce preference to local consumption at the expense of interstate business which has grown up with her sanction and encouragement. P. 697.

"8. Interference with interstate commerce in natural gas cannot be justified upon the ground that it is a measure designed to conserve the gas, as a natural product of the State in the interest of her people, because the gas has become a necessity and the supply is no longer sufficient to satisfy local needs and be used abroad. P. 598. *West v. Kansas Natural Gas Co.*, 221 U. S. 229.

"9. The Court, on full consideration, having reached the conclusion that the West Virginia Act is unconstitutional, and that its intended enforcement will subject the complaining States to injury of serious magnitude, operating with obvious inequity against them,—the appropriate decree is one declaring the act invalid, and enjoining its enforcement, leaving any needed regula-

tion of the interstate commerce involved to be sought elsewhere. P. 600."

A case likewise in point is *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229. The matter involved was the legality of an Act of the Legislature of the State of Oklahoma regulating the laying, constructing, and maintaining and operating of gas pipe lines for the transportation of natural gas within the State of Oklahoma, etc. The Act is set out in full at pages 241-4. The constitutional validity of that statute was attacked. This Court considered the case at very great length. It is stated that:

> "When a State recognizes an article to be a subject of interstate commerce, it cannot prohibit that article from being the subject of interstate commerce; and so *held* that corporations engaged in interstate commerce cannot be excluded from transporting from a State oil and gas produced therein and actually reduced to possession." (headnote 1)

Probably the reduction to possession in this case is the chief distinction between it and the *Pennsylvania v. West Virginia* case in 262 U. S., from which we have quoted. In the latter case, natural gas had not been reduced to possession, but none the less it was held to be a subject of interstate commerce. In the case at bar, the thing in dispute and being sold—tobacco, that is, leaf tobacco—has been reduced to possession, so there can be no dispute whatsoever that the leaf tobacco in the case at bar is a subject of interstate commerce.

The Oklahoma case states that:

> "In matters of foreign and interstate commerce, there are no State lines; in such commerce instead of

the States a new power and a new welfare appears that transcend the power and welfare of any State. (headnote 2)

"The welfare of the United States is constituted of the welfare of all the States, and that of the States is made greater by mutual division of their resources; this is the purpose and result of the commerce clause of the Constitution." (headnote 3)

At page 261 of the opinion this Court says:

"The inaction of Congress is a declaration of freedom from State interference with the transportation of articles of legitimate interstate commerce, and this has been the answer of the courts to contentions like those made in the case at bar."

This Court quotes from *Haskell, Governor, v. Cowham*, 187 Fed. 403, to the effect that:

"No State by the exercise of, or by the refusal to exercise, any or all of its powers, may prevent or unreasonably burden interstate commerce within its borders in any sound article thereof.

"No State by the exercise of, or by the refusal to exercise, any or all of its powers, may substantially discriminate against or directly regulate interstate commerce or the right to carry it on."

The law is that the power of the States over interstate commerce is non-existent, even in the absence of action by Congress. This statute is a *direct* regulation of interstate and foreign commerce and an instrumentality thereof.

CONGRESS HAS ACTED AND
ENTERED THIS FIELD.

The Act of Congress passed August 23, 1935, U.S.C.A. Title 7, Section 511, et seq., known as the Tobacco Inspection Act, is a statute regulating tobacco warehouses in some respects. It is primarily a grading statute, but shows clearly (Sec. 511 (1)) that this commodity is reasonably connected with interstate and foreign commerce, and on this assumption the national power is sought to be exerted.

DISCUSSION OF *Tagg Bros. & Moorhead v. United States*, 280 U. S. 421.

This is a stockyards case and arose under the Act of Congress of August 15, 1921, (U.S.C., Title 7, Sec. 201-217). Under that Act it was declared that persons engaged in the business of buying or selling in interstate commerce livestock at a stockyard on a commission basis are "market agencies" and among other things power is conferred upon the Secretary of Agriculture to determine what are the just and reasonable rates or charges for their services. The Secretary prescribed a tariff of maximum charges for such services at the Omaha stockyard, effective January 1, 1927. Each agency had a pen or pens owned by the stockyards and rented from them. These agencies were performing an indispensable service in interstate commerce and in livestock, and enjoyed a substantial monopoly of the Omaha stockyards. They had eliminated rate competition. Fifty-eight concerns, all registered under the aforesaid Act as such market agencies, and comprising the entire membership of the Omaha Livestock Exchange, brought this suit against the United States,

the Secretary of Agriculture, the Attorney General, and the United States Attorney for Nebraska. The prayers were that the order of the Secretary above mentioned be declared null and void, and that the defendants be enjoined from enforcing it by canceling the registration of the agencies, or by instituting proceedings to enforce the penalties prescribed by the act for violation of an order, or by other means. There were also prayers for a restraining order and for an interlocutory injunction.

The occasion for the Secretary's order above referred to was that the Omaha market agencies had filed with the packers and stockyards administration at Washington a schedule of charges known as Omaha Livestock Exchange Tariff No. 1. On January 16, 1926, they filed a new schedule, known as Tariff No. 2, which introduced higher rates to become effective January 26, 1926. The Secretary of Agriculture, acting on his own motion, issued on January 25th an order suspending the operation of the proposed schedule and giving notice of public hearings to be held before an examiner. Those hearings extended over many months. The market agencies participated through counsel, but introduced little evidence. The Government introduced much.

The application for an interlocutory injunction was made before three Judges pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913, which had been made applicable to packers and stockyards. Interlocutory injunction issued on consent of the government. The court below found for the defendants on final hearing and entered a final decree dissolving the interlocutory injunction and dismissing the bill (29 Fed. (2d) 750). Appeal to this Court was allowed.

This Court held that the rates of the market agencies were subject to regulation under the authority of Congress "to prevent their services from becoming an undue burden upon and obstruction of interstate commerce." (280 U. S. 431, 436). At page 437, is stated the method in which these market agencies do business as follows:

> "When a producer wishes to sell his live stock on the exchange, he ships it by rail or motor truck, or drives it on foot, to an agency at the stockyards. After the stock is unloaded, it is driven by the agency to its pens, sorted, watered, fed and offered by it for sale. The feed is provided by the stockyards corporation on order of the agency and a separate charge is made therefor by the corporation. When a purchaser is found, the stock is driven to the yard scales and weighed. Responsibility passes to the purchaser, or to the agency acting for him, as the stock is taken off the scales. Shipments are generally sold on the day of delivery and payments are made on the same day or the next morning. The agency remits the proceeds to the shippers at once, after deducting its commissions, freight, yardage, feed, inspection and other charges."

The Secretary of Agriculture claimed that his orders issued in the premises were valid and operative. The court below held that the same rules were to be applied in the construction and application of the orders under the Packers and Stockyards Act as are applied under the Interstate Commerce Act. This Court accepted that view (p. 442 of the opinion). The right of the Government to fix these rules and duties was a part of the law.

In the case of *Virginia Railway Co. v. System Federation No.* 40, *etc., et al,* No. 324, October term, decided March 29,

1937, this Court, in discussing the transactions that affect interstate commerce and are subject to the power of Congress to regulate, says in the second division of the opinion:

> "It is the nature of the work done and its relation to interstate transportation which afford adequate basis for the exercise of the regulatory power of Congress."

In the recent cases of *Associated Press v. National Labor Relations Board, National Labor Relations Board v. Jones & Laughlin Steel Corporation, National Labor Relations Board v. Fruehauf Trailer Co., National Labor Relations Board v. Friedman-Harry Marks Clothing Co., Inc., decided* April 12, 1937, this Court had occasion to examine the extent of Congressional power over interstate and foreign commerce. In the *Jones & Laughlin Steel Corporation* case it was said:

> "The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other resources. The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for 'its protection and advancement' (The Daniel Ball, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*County of Mobile v. Kimball*, 102 U. S. 691, 696, 697); 'to foster, protect, control and restrain.' *Second Employers' Liability Cases*, supra, (223 U. S. 1, 51) p. 47. See *Texas & N. O. R. Co. v. Railway Clerks*, supra, (281 U. S. 548, 570). That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' *Second Employers' Liability Cases*, p. 51; *Schechter Corporation v. United States*, supra, (295 U. S. 495).

"Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *Schechter Corporation v. United States*, supra. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. Id. The question is necessarily one of degree. As the Court said in *Chicago Board of Trade v. Olsen*, supra, (262 U. S. 1) p. 37, repeating what had been said in *Stafford v. Wallace*, supra, (258 U. S. 495): 'Whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause and it is primarily for Congress to consider and decide the fact of the danger and meet it.'"

In the case at bar the appellees are undertaking to enforce not an order of the Interstate Commerce Commission, but an Act of the General Assembly of Georgia which was and is enacted without power. They seek to maintain their defense on the theory that what is undertaken to regulate is intrastate commerce, when in truth it is interstate commerce.

The decisions which are relied upon in this case by appellants were all referred to in *Schechter Corporation v. United States*, 295 U. S. 495, 543. Under the rulings there laid

down, the sales involved in the case at bar must of necessity be in interstate commerce.

This Case Is Different From Those Cases Wherein a Commodity Comes to Rest in a State with no Intention of Being Again Shipped in Interstate or Foreign Commerce.

The tobacco involved in this case did not come into Georgia. It is grown in Georgia and is brought to appellants' warehouses for sale, and is, by another person acquired and shipped in interstate commerce or foreign commerce. The shipments here exactly meet the differentiations which are noted in the *Schechter Corp. case*, 295 U. S. 495 at 543. This Court differentiates the Schechter case from the cases we have relied upon.

Note for instance *Swift & Company v. United States*, 196 U. S. 375, where cattle were sent for sale from a place in one State, with the expectation they would end their transit, after purchase, in another State, and when in effect they did so, with only the interruption necessary to find a purchaser at the stock yards. This Court held that "when this is a constantly recurring course, it constitutes interstate commerce and the purchase of the cattle is an incident of such commerce."

Note also the *Carter Coal case*, supra, in which it was held that interstate commerce had not yet begun, and the attempted regulation was of production, rather than commerce.

The Statute Cannot Be Sustained as a Lawful Exercise of the State's Police Power.

The legitimate exercise of the police power comprehends enactments which directly affect the *public* morals, the *public* health, the *public* safety, and the *general* welfare. Can it be said that the reduction of appellants' fees for selling tobacco by and through this statute directly affects more of the general public of the State of Georgia than the limited number of appellants here and the growers of tobacco? Numerically, they are a very small number of the inhabitants of the State; territorially, only 20 of the State's 159 counties are involved. The business is in no sense a *public* business, catering to the *general* population.

The manner of conducting the business of tobacco warehousing and the nature of the transactions have been fully discussed hereinabove. That it is not a business "affected with a public interest" and "clothed with a public use" is apparent from this discussion. The mechanical formula heretofore used to divide business into the two classes of (1) those that can be so regulated and (2) those that cannot, came into the decisions of this Court in the case of *Munn v. Illinois*, 94 U. S. 113. The language there used is as follows:

> "When the owner of a property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public, for the common good, as long as he maintains the use. He may withdraw his grant by discontinuing the use."

This reasoning was used in the first cases deciding and establishing the power in the State to regulate railroads as businesses affected with a public use and in which the public had an interest.

C. B. & Q. R.R. Co. v. Iowa, 94 U. S. 155;
Peik v. C. & N.W. Ry. Co., 94 U. S. 164;
Ruggles v. Illinois, 108 U. S. 526.

It is significant that as early as 1885, ten years after the Munn decision, this Court begins to narrow if not to change this formula.

Compare *Stone v. Farmers Loan & Trust Co.* (Railroad Commission cases), 116 U. S. 307, at page 331, where it is said:

> "From what has thus been said, it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretence of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law."

See also *C. M. & St. P. Ry. Co. v. Minnesota* (1890) 134 U. S. 418, at 457:

> "No hearing is provided for, no summons or notice to the company before the commission has found what it is to find and declared what it is to declare, no opportunity provided for the company to introduce witnesses

before the commission, in fact, nothing which has the semblance of due process of law; and although, in the present case, it appears that, prior to the decision of the commission, the company appeared before it by its agent, and the commission investigated the rates charged by the company for transporting milk, yet it does not appear what the character of the investigation was or how the result was arrived at.

"'. . . In the present case, the return alleged that the rate of charge fixed by the commission was not equal or reasonable, and the Supreme Court held that the statute deprived the company of the right to show that judicially. The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws."

See also *Missouri Pacific Ry. Co. v. Nebraska* (1896), 164 U. S. 403.

The Munn formula, however, was applied to grist mills, that is, public or custom mills in 1876—*Township of Burlington v. Beasley*, 94 U. S. 310; to public water companies in

Spring Valley Waterworks v. Schottler (1883), 110 U. S. 347.

Again, the statutes regulating, to the point of price fixing, grain elevators were before the court in 1891,—

Budd v. New York, 143 U. S. 517; and in 1894—

Brass v. North Dakota, 153 U. S. 391.

This last case is the extreme application of this formula.

In 1894 a significant decision refusing to apply the Munn formula was *Covington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S. 204. Here this court recognizes that despite the Munn formula and decision, the regulation of bridge tolls by the State of Kentucky on a bridge over the Ohio River, between Kentucky and Ohio, was not constitutional. Interstate commerce begins to appear fully as a basis for the holding that lack of power exists in the State to regulate businesses which involve interstate commerce.

In *Cotting v. Kansas City Stock Yards Co.* (1901), 183 U. S. 79, this court discusses the Munn formula, but holds the Kansas statute, fixing prices for the stock yard there involved, to be unconstitutional.

The case of *McLean v. Arkansas*, 211 U. S. 539 (decided in 1909), holds that coal mines were subject to "regulation," requiring payment of miners' wages on basis of unscreened coal and such regulation was a proper exercise of the state police power.

In the last thirty years there have been many attempts to

regulate various private businesses to the extent of price fixing. The following businesses have been held to be not so affected with a public interest as to be subject to such price fixing legislation:

Butchers, bakers, tailors, wood choppers, mining operators, food preparation factories:

Wolff Packing Co. v. Court of Industrial Relations (1923), 262 U. S. 522;

Making and selling of ice:

New State Ice Co. v. Liebman (1932), 265 U. S. 262;

Employment agencies:

Adams v. Tanner (1917), 244 U. S. 590;

Ribnik v. McBride (1928), 277 U. S. 351;

Sale and distribution of gasoline:

Williams v. Standard Oil Co. (1929), 278 U. S. 235;

The selling of theatre tickets:

Tyson & Bro. v. Banton (1927), 273 U. S. 418.

The Business of Conducting and Operating a Tobacco Wakehouse Is Not So Affected With a Public Interest as to Justify Legislative Regulation.

In *Tyson and Brother v. Banton*, 273 U. S. 418, it is held:

> "The right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of

the property itself, and, as such, within the protection of the due process of law clauses of the Fifth and Fourteenth Amendments."

The tenth headnote is as follows:

"The language of an opinion (*Munn v. Illinois*, 94 U. S. 113, 126) must be limited to the case under consideration."

At page 432, et seq., of the opinion this Court holds:

"The leading, as well as the earliest, definite decision dealing with a business falling within that class is *Munn v. Illinois*, supra, which sustained the validity of an Illinois statute fixing the maximum charge to be made for the use of elevators and warehouses for the elevation and storage of grain.

"As ground for that decision the opinion recites, among other things, that grain came from the west and northwest by water and rail to Chicago where the greater part of it was shipped by vessel to the seaboard and some of it by railway to eastern ports; that Chicago had been made the greatest grain market in the world; and that the business had created a demand for means by which the immense quantity of grain could be handled or stored and these had been found in grain elevators. In this way the largest traffic between the country north and west of Chicago and that lying on the Atlantic coast north of Washington, was in grain passing through the elevators at Chicago. The trade in grain between seven or eight of the great states of the west and four or five of those lying on the seashore, formed the largest part of the interstate commerce in these states. The elevators in Chicago were immense structures, holding from 300,000 to 1,000,000 bushels at one time. Under these circumstances, it was said that the elevators stood in the very 'gateway of commerce' and took toll from

all who passed; that their business certainly tended to a common charge and had become a thing of public interest and use; that every bushel of grain for its passage paid a toll, which was a common charge; and, finally, that if any business could be clothed 'with a public interest, and cease to be *juris privati* only,' this had been made so by the facts.

"There is some general language in the opinion which, superficially, might seem broad enough to cover cases like the present one. It was said, for example, (P. 126) 'Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large.' Literally, that would include all the large industries and some small ones; but in accordance with the well settled rule the words must be limited to the case under consideration. *Cohens v. Virginia*, 6 Wheat. 264, 399; *Plumley v. Massachusetts*, 155 U. S. 461, 474. Indeed, the language quoted is qualified immediately by a statement of the general rule, that—'When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created.'

"The significant requirement is that the property shall be devoted to a use in which the public has an interest, which simply means, as in terms it is expressed at page 130, that it shall be devoted to 'a public use.' Stated in another form, a business or property, in order to be affected with a public interest, must be such or be so employed as to justify the conclusion that it has been *devoted* to a public use and its use thereby, in effect, *granted* to the public. See *Louisville, etc. R.R. Co. v. West Coast Co.*, 198 U. S. 483, 500. The subsequent elevator and warehouse cases, *Budd v. New York*, 143 U. S. 517, and *Brass v. Stoeser*, 153 U. S. 391, while

presenting conditions of less gravity, rest upon the authority of the *Munn* case. The differences among the three cases are in matters of degree."

In *Chesapeake and Potomac Telephone Co. v. Manning*, 186 U. S. 238, at 246, this Court held:

> "And we start with the proposition that it cannot be presumed that a legislature intends any interference with purely private business. It cannot ordinarily prescribe what an individual or corporation, engaged in a purely private business, shall charge for services, and, therefore, although the language of a statute may be broad enough to include such private business, it will generally be excepted therefrom in order to remove all doubts of the validity of the legislation. It appears that some portion of the defendant's business is of a purely private nature, the receipts whereof are spoken of in its reports as private rentals, and as to such business Congress could not, if it would, prescribe what shall be charged therefor."

In the case of *Wolff Packing Co. v. Court of Industrial Relations of the State of Kansas*, 262 U. S. 522, the State of Kansas created what it called an Industrial Court which required compulsory arbitration in certain circumstances to fix the wages of employees. It is claimed in this case that the Act declared that the manufacture and preparation of food for human consumption was affected with a public interest and the power of the legislature so to declare and then to regulate the business extends to fixing wages and terms of employment to secure continuity of operation.

This Court reversed the Supreme Court of Kansas, which had sustained the Industrial Court, in these respects. It was stated that:

"Businesses said to be clothed with a public interest justifying some public regulation may be divided into three classes:

"(1) Those which are carried on under the authority of a public grant of privileges which either expressly or impliedly imposes the affirmative duty of rendering a public service demanded by any member of the public. Such are the railroads, other common carriers and public utilities.

"(2) Certain occupations, regarded as exceptional, the public interest attaching to which, recognized from earliest times, has survived the period of arbitrary laws by Parliament or Colonial legislatures for regulating all trades and callings. Such are those of the keepers of inns, cabs and grist mills. *State v. Edwards*, 86 Me. 102; *Terminal Taxicab Co. v. District of Columbia*, 241 U. S. 252, 254.

"(3) Businesses which though not public at their inception may be fairly said to have risen to be such and have become subject in consequence to some government regulation. They have come to hold such a peculiar relation to the public that this is superimposed upon them. In the language of the cases, the owner by devoting his business to the public use, in effect grants the public an interest in that use and subjects himself to public regulation to the extent of that interest although the property continues to belong to its private owner and to be entitled to protection accordingly. *Munn v. Illinois*, 94 U. S. 113; *Spring Valley Water Works v. Schottler*, 110 U. S. 347; *Budd v. New York*, 117 N. E. 1, 27; s.c. 143 U. S. 517; *Brass v. Stoeser*, 153 U. S. 391; *Noble State Bank v. Haskell*, 219 U. S. 104; *German Alliance Insurance Co. v. Lewis*, 233 U. S. 389; *Van Dyke v. Geary*, 244 U. S. 39, 47; *Block v. Hirsh*, 256 U. S. 135."

but this Court said:

> "It is manifest from an examination of the cases cited under the third head that the mere declaration by a legislature that a business is affected with a public interest is not conclusive of the question whether its attempted regulation on that ground is justified. The circumstances of its alleged change from the status of a private business and its freedom from regulation into one in which the public have come to have an interest are always a subject of judicial inquiry."

This Court held that the circumstances which charge a business with a public interest must be such as to create a peculiarly close relation between the public and those engaged in it, and raise implications of an affirmative obligation on their part to be reasonable in dealing with the public.

This Court rejected the argument that the declaration of the legislature that the business of food preparation "if affected with a public interest and devoted to a public use should be most persuasive with the court and that nothing but the clearest reason to the contrary will prevail with the Court to hold otherwise." In its opinion, at page 537, this Court states:

> "It has never been supposed, since the adoption of the Constitution, that the business of the butcher, or the baker, the tailor, the wood chopper, the mining operator or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by State regulation. It is true that in the days of the early common law an omnipotent Parliament did regulate prices and wages as it chose, and occasionally a Colonial legislature sought to exercise the same power; but nowadays one does not devote one's property or

business to the public use or clothe it with a public interest merely because one makes commodities for, and sells to, the public in the common callings of which those above mentioned are instances."

This Court recognized that changing circumstances might bring under regulation a property or business not theretofore under such regulation, and says:

"But never has regulation of food preparation been extended to fixing wages or the prices to the public, as in the cases cited above where fear of monopoly prompted, and was held to justify, regulation of rates."

Again, it is said at page 539:

"To say that a business is clothed with a public interest, is not to determine what regulation may be permissible in view of the private rights of the owner."

MUNN v. ILLINOIS, 94 U. S. 113.

This is one of the Granger cases and was decided at the October term, 1876. The opinion beginning at page 123 states the question to be determined to be

"Whether the General Assembly of Illinois can, under the limitations upon the legislative power of the United States imposed by the Constitution of the United States, fix by law the maximum of charges for the storage of grain in warehouses, at Chicago and other places in the State having not less than one hundred thousand inhabitants, in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved."

It will be noted that the statute of Illinois was passed pursuant to a then recently adopted constitution which the people of Illinois accepted. "Public warehouses" were defined in the constitution as including grain elevators. No similar constitutional provision or statute is found in Georgia.

The grain warehouses or elevators in that case were very large, holding from 300,000 to 1,000,000 bushels at one time. They were divided into bins of large capacity and great strength. They were located with the river harbor on one side and the railway tracks on the other and the grain was run through them from car to vessel, or boat to car, as might be demanded in the course of business. It was impossible to preserve each owner's grain separately and this gave rise to a system of inspection and grading, by which the grain of different owners was mixed, and receipts issued for the number of bushels which were negotiable, and redeemable in like kind, upon demand. There were 14 warehouses adapted to this particular business and owned by about 30 persons. Through these warehouses passed the grain of seven or eight great States of the West.

This case stood at the threshold of a changing concept. It announced the principle that the fixing of rates of common carriers and of other properties affected with a public interest was for the legislative discretion and that this discretion, having been exercised, could not be disturbed in the courts. This latter provision has long been overturned. It was virtually undone in *Stone v. Farmers Loan & Trust Co.*, 116 U. S. 307 at 331. It was actually destroyed in *Chicaco, etc. R.R. v. Minnesota*, 134 U. S. 418 at 456. The position taken by this Court to the effect that the States could regulate

the rates of the warehouses involved for services rendered to grain moving in interstate commerce and which did not lose its interstate qualities was repudiated in *Wabash Ry. Co, v. Illinois*, 118 U. S. 557, 569-70, October Term, 1886.

In this case the warehouses are not used for storage; they are used simply for the purpose of selling, and the warehouse becomes simply a place where the people meet and where the commodity is arranged for orderly sale; where sales are made and accountings had. There is no monopoly in this warehouse business. On the other hand, there seems to be a great over-crowding of facilities.

In the Munn case transportation was involved, interstate and intrastate.

The commodity passed completely out of the control of the owner and became commingled with the grain of others. In the tobacco case, the owner never loses identity or control over his property. It never becomes commingled with the property of others. He can withdraw it from a sale at any time even after it has been knocked down. He may resell in the same warehouse or he may take it to another warehouse in the same or another community and do that without having incurred any charge. The Munn case regulated the charges for a whole service. The Georgia Act undertakes to regulate the price which is to be charged or exacted for personal and individual services, dividing the charge into its elements.

The Munn case cannot be a precedent for rulings in this case.

The first headnote in the case of *New State Ice Co. v. Liedmann*, 285 U. S. 262, is as follows:

> "The business of manufacturing ice and selling it is essentially a private business and not so affected with a public interest that a legislature may constitutionally limit the number of those who may engage in it, in order to control competition."

At page 277 of the opinion this Court held:

> "We have thus, with some particularity, discussed the circumstances which, so far as the State of Oklahoma is concerned, afford ground for sustaining the legislative pronouncement that the business of operating cotton gins is charged with a public use, in order to put them in contrast with the completely unlike circumstances which attend the business of manufacturing, selling and distributing ice. Here we are dealing with an ordinary business, not with a paramount industry upon which the prosperity of the entire State in large measure depends. It is a business as essentially private in its nature as the business of the grocer, the dairyman, the butcher, the baker, the shoemaker, or the tailor, each of whom performs a service which, to a greater or less extent, the community is dependent upon and is interested in having maintained; but which bears no such relation to the public as to warrant its inclusion in the category of businesses charged with a public use. It may be quite true that in Oklahoma ice is not only an article of prime necessity, but indispensable; *but certainly not more so than food or clothing or the shelter of a home*. And this court has definitely said that the production or sale of food or clothing cannot be subjected to legislative regulation on the basis of a public use; and that the same is true in respect of the business of renting houses and apartments, except as to temporary measures to tide over grave emergencies. See *Tyson v.*

Banton, supra, (273 U. S. 418), pp. 437-438, and cases cited."

At page 278 it is said:

"Plainly, a regulation which has the effect of denying or unreasonably curtailing the common right to engage in a lawful private business, such as that under review, cannot be upheld consistently with the Fourteenth Amendment. Under that amendment, nothing is more clearly settled than that it is beyond the power of a State, 'under the guise of protecting the public arbitrarily (to) interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.'" The court cites *Burns Baking Co. v. Bryan*, 264 U. S. 504, 513; *Liggett v. Baldridge*, 278 U. S. 105, 113.

At page 280 it is said:

"The principle is imbedded in our constitutional system that there are certain essentials of liberty with which the State is not entitled to dispense in the interest of experiments. This principle has been applied by this court in many cases. *Dorchy v. Kansas*, 264 U. S. 286; *Wolff Co. v. Industrial Court*, 262 U. S. 522; 267 U. S. 552; *Pierce v. Sisters*, 268 U. S. 510; *Nixon v. Herndon*, 273 U. S. 536; *Tumey v. Ohio*, 273 U. S. 510; *Menley v. Georgia*, 279 U. S. 1; *Washington v. Roberts*, 273 U. S. 116; *Chicago St. P., M. & C. Ry. Co. v. Holmberg*, 282 U. S. 162; *Stromberg v. California*, 283 U. S. 359; *Near v. Minnesota*, 283 U. S. 697. In the case last cited, the theory of experimentation in censorship was not permitted to interfere with the fundamental doctrine of the freedom of the press. The opportunity to apply one's labor and skill in an ordinary occupation with proper regard for all reasonable regulations is no less entitled to protection."

In *Ribnik v. McBride*, 277 U. S. 350, at 358-9, the first headnote is:

> "The business of an employment agent is not one 'affected with a public interest'; and, under due process clause of the Fourteenth Amendment, a State cannot fix the fees which such an agent may charge for his services. P. 355."

This Court further said:

> "And we since have held definitely that the power to require a license for and to regulate the conduct of a business is distinct from the power to fix prices. 'The latter power is not only a more definite and serious invasion of the rights of property and the freedom of contract, but its exercise cannot always be justified by circumstances which have been held to justify legislative regulation of the manner in which a business shall be carried on.' *Tyson & Brother v. Banton*, supra, p. 431; and see pp. 440-441.
>
> "To urge that extortion, fraud, imposition, discrimination and the like have been practiced to some, or to a great, extent in connection with the business here under consideration, or that the business is one lending itself peculiarly to such evils, is simply to restate grounds already fully considered by this Court. These are grounds for regulation but not for price fixing, as we have already definitely decided. *Tyson & Brother v. Banton*, supra, 442-445.
>
> "There are a number of states which have statutes like that now under consideration, and we are asked to give weight to that circumstance. It is to be observed, however, that with the exception of the decision now under review none of these statutes has been judicially considered, except in the State of California, where the legislation was declared unconstitutional. *Ex parte*

Dickey, 144 Cal. 234; *In re Smith*, 193 Cal. 337. And it was said in oral argument, and not disputed, that, while legislation of this character existed in several states, generally it was not enforced, in some instances because the state's attorney-general had advised that the legislation was unconstitutional. In any event, under all the circumstances, and in the face of our prior decisions, we do not regard the mere existence in other states of statutory provisions like the one now under review as entitled to persuasive force."

In *Wilson v. New*, 243 U. S. 332, the Adamson Law was upheld and in *Block v. Hirsh*, 256 U. S. 135; *Brown Holding Co. v. Feldman*, 256 U. S. 170, this Court upheld the renting law of New York and the District of Columbia. These cases, however, are clearly distinguishable, as they were decided on the statute which recited as a basis for the regulation of these particular businesses the existence of a grave emergency. See *Tyson & Brother v. Banton*, supra. It has been held that the insurance business was so affected by a public interest that it was subject to regulation. *German Alliance Insurance Co. v. Kansas*, 233 U. S. 389. However, the trend of the decision was changed by the opinion in *Wolff Packing Co. v. Court of Industrial Relations of the State of Kansas*, supra.

THE BUSINESS OF TOBACCO WAREHOUSING IS NOT SUBJECT TO SUCH REGULATION AS PRICE FIXING.

In the case of *Ribnik v. McBride*, 277 U. S. 350, at 357, it is said:

"Under the decisions of this Court it is no longer

fairly open to question that, at least in the absence of a grave emergency, *Tyson & Brother v. Banton*, supra, pp. 431, 437, the fixing of prices for food or clothing, of house rental or of wages to be paid, whether minimum or maximum, is beyond the legislative power. And we perceive no reason for applying a different rule in the case of legislation *controlling prices to be paid for services rendered* in securing a place for an employee or an employee for a place." (Italics ours.)

See also:

Tagg Brothers v. United States, 280 U. S. 420, 438;

Tyson & Brother v. Banton, supra.

In the case of *Williams v. Standard Oil Company of Louisiana*, 278 U. S. 235, this Court held:

"The business of dealing in gasoline is not affected with a public interest which will enable the State *to fix prices for its sale.*" (4th headnote.)

This Court in its opinion, at page 239, states:

"It is settled by recent decisions of this Court that a State legislature is without constitutional power to fix prices at which commodities may be sold, services rendered, or property used, unless the business of property involved is 'affected with a public interest.' "

At page 240 this Court says:

"In support of the Act under review, it is urged that gasoline is of widespread use; that enormous quantities of it are sold in the State of Tennessee; and that it has become necessary and indispensable in carrying on commercial and other activities within the State. But we are here concerned with the character of the business, not with its size or the extent to which the com-

modity is used. Gasoline is one of the ordinary commodities of trade, differing, so far as the question here is affected, in no essential respect from a great variety of other articles commonly bought and sold by merchants and private dealers in the country. The decisions referred to above make it perfectly clear that the business of dealing in such articles, irrespective of its extent, does not come within the phrase 'affected with a public interest.' Those decisions control the present case."

There is no decision from the Supreme Court of Georgia holding tobacco warehousing a business affected with a public interest or clothed with a public use.

The Right to Conduct One's Business and to Contract Is Protected by the Due Process Clauses of the Fifth and Fourteenth Amendments and Is Free From Legislative Price Fixing.

In *Highland v. Russell Car Co.*, 279 U. S. 253, at page 261, this Court held:

> "It is everywhere recognized that the freedom of the people to enter into and carry out contracts in respect of their property and private affairs is a matter of great public concern and that such liberty may not lightly be impaired." Citing *Steele v. Drummond*, 275 U. S. 199, 205.

The same opinion continues at page 261:

> "Generally speaking, that right is protected by the due process clauses of the Fifth and Fourteenth Amendments." Citing *Allgeyer v. Louisiana*, 165 U. S. 578,

591; *Adair v. United States*, 208 U. S. 161, 174; *Coppage v. Kansas*, 236 U. S. 1, 14.

To illustrate the right of freedom of contract and how zealously it is preserved, private carriers for hire cannot be denied the use of the highway on condition that the private carrier becomes a common carrier and assumes the burdens of such carrier. *Frost Trucking Co. v. Railroad Commission*, 271 U. S. 583.

The following businesses have been held to be not so affected with a public interest as to be the subject of price fixing legislation:

Butchers, bakers, tailors, wood-choppers, mining operators—*Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522. Making and selling ice—*New State Ice Co. v. Liebmann*, 285 U. S. 262. Employment agencies—*Ribnik v. McBride, Comm. of Labor*, 277 U. S. 358-9. Dealers in gasoline—*Williams v. Standard Oil Co.*, 278 U. S. 235. The selling of theatre tickets—*Tyson & Brother v. Banton*, 273 U. S. 418.

It is, however, claimed in this cause that without a hearing, the charges to be made for auctioning and selling tobacco in a space occupied for that particular purpose may be controlled and that the prices once fixed so remain until repealed or changed by the General Assembly. We claim that is unjust, unreasonable and arbitrary.

NEBBIA v. NEW YORK, 291 U. S. 502.

The Nebbia case requires consideration in this connection in the light of the law as it stood prior to its rendition,

and especially the effect, if any, which said opinion had upon the cases which have been hereinbefore discussed.

The Nebbia case is based upon an Act of the General Assembly of New York which was adopted after the General Assembly of that State had the matter under consideration through a Joint Committee which was appointed on March 10, 1932, and consisted of members of the Senate and Assembly. The bill is Chapter 158 of the Laws of 1933 and creates a Milk Control Board with power, among other things, to "fix minimum and maximum . . . retail prices to be charged by . . . stores to consumers for consumption off the premises where sold." (291 U. S. 515.) The Board fixed nine cents as the price to be charged by a store for a quart of milk. Nebbia, the proprietor of a grocery store in Rochester, sold two quarts of milk and a five-cent loaf of bread for eighteen cents, and was convicted for violating the Board's order. A decision was rendered in the case with a dissent of four Justices, to-wit: Mr. Justice McReynolds, Mr. Justice Van Devanter, Mr. Justice Sutherland and Mr. Justice Butler.

The argument for the State of New York declared "the Milk Control Law was designed and enacted for the purpose of regulating the price of milk in the State of New York *temporarily and during a serious emergency*" (p. 511). (Italics ours.) The brief for the State of New York states that the Act was enacted "after a long and exhaustive investigation of conditions in the milk industry in the State, the Legislature found and determined that such an emergency existed. It is within the power of the Legislature to make this finding of fact, which is at least highly persuasive" (p. 511). As sustaining that statement, counsel for New York cites

Wilson v. New, 243 U. S. 332; *Block v. Hirsh*, 256 U. S. 135, 157; *Levy Leasing Co. v. Siegel*, 258 U. S. 242, 245; *People ex rel Durham R. Corp. v. LaFetra*, 230 N. Y. 429, 445. The State's brief then states:

> "The temporary and emergent character of the legislation being accepted, it is well within the scope of the police power." Citing *People ex rel Durham R. Corp. v. LaFetra*, 230 N. Y. 429, and *People v. Perretta*, 253 N. Y. 305, 309.

This Court in the beginning of its decision says (p. 514) not only that the price of milk had been fixed by the General Assembly of New York, but it states:

> "During 1932, the prices received by farmers for milk were much below the cost of production. The decline in prices during 1931 and 1932 was much greater than that of prices generally. The situation of the families of dairy producers had become desperate and called for State aid similar to that afforded the unemployed, if conditions should not improve."

After referring to the fact that a joint legislative committee had been created on March 10, 1932, this Court states that the committee organized May 6, 1932, and its activities lasted nearly a year. It held 13 public hearings at which 254 witnesses testified and 2,350 typewritten pages of testimony were taken. Numerous exhibits were submitted. Under its direction an extensive research program was prosecuted by experts and official bodies and employees of the State and municipalities, which resulted in the assembling of much pertinent information. Detailed reports were received from over 100 distributors of milk, and these were collated and the information obtained analyzed. As a result of the study

of this material, a report covering 473 closely printed pages, embracing the conclusions and recommendations of the committee, was presented to the legislature April 10, 1933. This Court says:

> "This document included detailed findings with co[illegible]ous references to the supporting evidence; appendices outlining the nature and results of prior investigations of the milk industry of the State, briefs upon the legal questions involved, and forms of bills recommended for passage. The conscientious effort and thoroughness exhibited by the report lend weight to the committee's conclusions."

This Court then summarizes the Committee's conclusions, beginning at page 516. It found, in substance, that milk was an essential item of diet; that it could not long be stored; that it was an excellent medium for growth of bacteria; and that these facts necessitated safeguards in its production and handling for human consumption which greatly increased the cost of the business; that failure of producers to receive a reasonable return for their labor and investment over an extended period threatened a relaxation of vigilance against contamination. The Committee found that

> "Dairying yields fully one-half of the total income from all farm products. Dairy farm investment amounts to approximately $1,000,000,000.00. Curtailment or destruction of the dairy industry would cause a serious economic loss to the people of the State."

It also dealt with the price decline and the causes therefor which include a periodic increase in the number of cows and in milk production, the prevalence of unfair and destructive trade practices in the distribution of milk, leading to a de-

moralization of prices in the metropolitan area and other markets, and the failure of transportation and distribution charges to be reduced in proportion to the reduction in retail prices for milk and cream. It further found that under the best practicable adjustment of supply to demand, the industry must carry a surplus of about 20 per cent; that close adjustment of supply to demand is hindered by several factors difficult to control; that a satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and all distributors in the milk-shed; and so long as the surplus burden is unequally distributed the pressure to market surplus milk in fluid form will be a serious disturbing factor; that indulgence in price-cutting—purchasing milk at blended prices (i.e., an average between the price paid the producer for milk for sale as fluid milk, and the lower surplus milk price paid by the larger organizations) often compels the larger dealer to cut the price to his own and the producer's detriment." This Court finds (p. 518):

> "The legislature adopted Chapter 158 as a method of correcting the evils, which the report of the committee showed could not be expected to right themselves through the ordinary play of the forces of supply and demand, owing to the peculiar and uncontrollable factors affecting the industry."

This Court held at page 536 as follows:

> "It is clear that there is no closed class or category of businesses affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory."

This Court cites: *Chas. Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522, 535. It then continues:

> "The phrase 'affected with a public interest' can, in the nature of things, mean no more than that an industry, for adequate reason, is subject to control for the public good. In several of the decisions of this court wherein the expressions 'affected with a public interest' and 'clothed with a public use' have been brought forward as the criterion of the validity of price control, it has been admitted that they are not susceptible of definition and form an unsatisfactory test of the constitutionality of legislation directed at business practices or prices. These decisions *must rest, finally, upon the basis that the requirements of due process were not met because the laws were found arbitrary in their operation and effect.*". (Italics ours.) Citing: *Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522; *Tyson & Brother v. Banton*, 273 U. S. 418; *Ribnik v. McBride*, 277 U. S. 350; *Williams v. Standard Oil Co.*, 278 U. S. 235.

This Court continues:

> "But there can be no doubt that upon proper occasion and by appropriate measures the State may regulate a business in any of its aspects, including the prices to be charged for the products or commodities it sells."

This Court further states at page 537:

> "And it is equally clear that if the legislative policy be to curb unrestrained and harmful competition by measures which are not arbitrary or discriminatory it does not lie with the courts to determine that the rule is unwise. With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal."

DISTINCTION BETWEEN THE NEBBIA CASE
(291 U. S. 502) AND THE CASES OF
TYSON & BROTHER v. BANTON, 273 U. S. 418;
WOLFF PACKING CO. v. COURT OF INDUSTRIAL RELATIONS,
262 U. S. 522;
RIBNIK v. MCBRIDE, 277 U. S. 350; AND
WILLIAMS v. STANDARD OIL CO., 278 U. S. 235.

Let us compare *Tyson & Brother v. Banton*, 273 U. S. 418. Tyson & Brother—United Theatre Ticket Offices, Inc., was a duly licensed company engaged in the business of reselling tickets of admission to theatres and other places of entertainment in the City of New York, and its sales averaged approximately 300,000 tickets per annum. Section 167 of Chapter 590 of the New York Laws of 1922 declares that the price of or charge for admission to theatres, etc., is a matter affected with a public interest and subject to State supervision in order to safeguard the public against fraud, extortion, exorbitant rates and similar abuses. Section 172 forbids the resale of any ticket or other evidence of the right of entry to any theatre, etc., "at a price in excess of fifty cents in advance of the price printed on the face of such ticket or other evidence of the right of entry," such printing being required by that section.

The bill in this case was brought to prevent the enforcement of the above mentioned provision. It alleged threats on the part of the authorities to enforce the statute.

This Court in its opinion, at page 429, stated:

> "The statutory declaration (Sec. 167) is that the price of or charge for admission to a theatre, place of amusement or entertainment or other place where exhi-

bitions, games, contests or performances are held, is a matter affected with a public interest."

This Court appears to have carefully discussed the question of the right to fix prices and especially to fix prices of theatre tickets. By a five to four decision, this Court held that the Legislature did not have the right to regulate the price at which theatre tickets, etc., could be sold. At page 429, Mr. Justice Sutherland, who wrote the opinion, said:

> "In the endeavor to reach a correct conclusion in respect of this inquiry, it will be helpful, by way of preface, to state certain pertinent considerations. The first of these is that the right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of the property itself, *Case of the State Freight Tax*, 15 Wall. 232, 278, and, as such, within the protection of the due process of law clauses of the Fifth and Fourteenth Amendments. See *City of Carrollton v. Bazzette*, 159 Ill. 284, 294. The power to regulate property, services or business can be invoked only under special circumstances; and it does not follow that because the power may exist to regulate in some particulars it exists to regulate in others or in all."

This Court further said, at page 430:

> "The authority to regulate the conduct of a business or to require a license, comes from a branch of the police power which may be quite distinct from the power to fix prices. The latter, ordinarily, does not exist in respect of merely private property or business, *Chesapeake & Potomac Tel. Co. v. Manning*, 186 U. S. 238, 246, but exists only where the business or the property involved has become 'affected with a public interest.'" (Italics ours.)

This Court at length discusses the phrase "affected with a public interest." The opinion clearly draws a distinction between the right to regulate and the right to fix prices. At page 431 it held:

> ". . . the mere declaration by the legislature that a particular kind of property or business is affected with a public interest is not conclusive upon the question of the validity of the regulation. The matter is one which is always open to judicial inquiry."

It must be remembered that the *Tyson & Brother* case is one concerning which this Court said in the *Nebbia* case:

> "The decisions must rest, finally, upon the basis that the requirements of due process were not met because the laws were found arbitrary in their operation and effect." (291 U. S. 567.)

The next case which this Court refers to in the *Nebbia* case is *Wolff Packing Co. v. Industrial Court*, 262 U. S. 522 (Kansas). The law there under consideration was known as "The Court of Industrial Relations Act of Kansas," Chapter 29, Special Session, Laws of 1920. The Charles Wolff Packing Company was a corporation of Kansas engaged in slaughtering hogs and cattle and preparing the meat for sale and shipment. It had total annual sales of $7,000,000, and more than half its products were sold beyond the State. It had 300 employees. This was considered rather a small establishment. The Act under consideration in this case prescribed a schedule of wages and the limitation of hours and rate of pay required for overtime, which resulted in an increase in wages of more than $400.00 a week. There had been no difficulty in securing all the labor it desired at the reduced rates offered. The highest court of the State had

passed upon the law and had held it to be constitutional. This Court rendered a unanimous decision holding the law to be unconstitutional—reversing the State Court.

The opinion was written by Mr. Chief Justice Taft. One paragraph of it, on page 537, is as follows:

> "It has never been supposed, since the adoption of the Constitution, that the business of the butcher, of the baker, the tailor, the wood chopper, the mining operator or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by State regulation. It is true that in the days of the early common law an omnipotent Parliament did regulate prices and wages as it chose, and occasionally a Colonial legislature sought to exercise the same power; but nowadays one does not devote one's property or business to the public use or clothe it with a public interest merely because one makes commodities for, and sells to, the public in the common callings of which those above mentioned are instances."

At page 543 of the opinion it states:

> "The minutely detailed government supervision, including that of their relations to their employees, to which the railroads of the country have been gradually subjected by Congress through its power over interstate commerce, furnishes no precedent for regulation of the business of the plaintiff in error whose classification as public is at best doubtful. It is not too much to say that the ruling in *Wilson v. New* (243 U. S. 332) went to the border line, although it concerned an interstate common carrier in the presence of a nation-wide emergency and the possibility of great disaster. Certainly there is nothing to justify extending the drastic regulation sustained in that exceptional case to the one before us.

"We think the Industrial Court Act, in so far as it permits the fixing of wages in plaintiff in error's packing house, is in conflict with the Fourteenth Amendment and deprives it of its property and liberty of contract without due process of law."

Ribnik v. McBride, 277 U. S. 350, is the next case referred to in the Nebbia case. The first four headnotes of that case are as follows:

"1. The business of an employment agent is not one 'affected with a public interest'; and, under the due process clause of the Fourteenth Amendment, a State cannot fix the fees which such an agent may charge for his services.

"2. The power to require a license for, and to regulate the conduct of, a business is distinct from the power to fix prices.

"3. The fact that a business lends itself peculiarly to the practice of fraud, extortion and discrimination may be ground for regulation, but not for price-fixing.

"4. In determining the constitutionality of a State price-fixing statute, the mere fact that like statutes exist in other States—*held* not of persuasive force."

The opinion, at page 358, contains the following:

"And we since have held definitely that the power to require a license for and to regulate the conduct of a business is distinct from the power to fix prices. 'The latter power is not only a more definite and serious invasion of the rights of property and the freedom of contract, but its exercise cannot always be justified by circumstances which have been held to justify legislative regulation of the manner in which a business shall be carried on.' *Tyson & Brother v. Banton*, supra, p. 431; and see pp. 440-441.

"To urge that extortion, fraud, imposition, discrimination and the like have been practiced to some, or to a great, extent in connection with the business here under consideration, or that the business is one lending itself peculiarly to such evils, is simply to restate grounds already fully considered by this Court. These are grounds for regulation but not for price fixing, as we have already definitely decided. *Tyson & Brother v. Banton*, supra, 442-445."

Hegeman Farms Corp. v. Baldwin, 293 U. S. 163:

The New York Milk Control Act was amended and continued with the laws of 1934 (Chap. 126). In this case the Milk Control Act of 1933 was attacked as a whole. The attack was dismissed on authority of the Nebbia case (291 U. S. 502). That dismissal was not pressed in the Supreme Court. It was treated as abandoned. By orders issued under the New York Control statute dealers were required to pay producers of milk a minimum price per quart, and were subject to higher minimum resale prices. Competition made it impossible for the dealer in this case to sell for more than the resale minimum, and the "spread" or difference between that and the minimum purchase price was not enough to cover the cost of the operations. This Court held:

"That upon these facts only, with nothing to show the degree of efficiency with which its business was conducted, there is no ground to conclude that the price limits are arbitrary and therefore in violation of the due process clause of the Fourteenth Amendment."

This Court reduces the bill to this finality:

"The appellant's grievance amounts to this, that it is operating at a loss, though other dealers more efficient

or economical or better known to the public may be operating at a profit."

This Court was not dealing here with a maximum price. It was dealing with a minimum price and the dealer had the right to increase the minimum price. This Court held at page 171:

> "If the price is not raised, the reason must be that efficient operators find that they can get along without a change. Either that must be so, or else, as was pointed out in the opinion below, the industry will perish. The bill does not suggest that such a catastrophe is imminent. True, of course, it is, that the weaker members of the group (the marginal operators or even others above the margin) may find themselves unable to keep pace with the stronger, but it is their comparative inefficiency, not tyrranical compulsion, that makes them laggards in the race. Whether a wise statecraft will favor or condemn this exaltation of the strong is a matter of legislative policy with which courts are not concerned."

Williams v. Standard Oil Co. of Louisiana, 278 U. S. 235:

The Standard Oil Company of Louisiana and The Texas Company brought suits in the District Court for the Middle District of Tennessee to enjoin the State officers, Williams and others, from carrying out their intention to enforce an Act to regulate the price of gasoline. This Court and the District Court considered the two cases together. A statute was adopted in Tennessee in 1927, the purpose and effect of which was to fix prices at which gasoline might be sold within the State. A Division of Motors and Motor Fuels was created in the Department of Finance and Taxation and authorized to collect and record data concerning the manufacture and sale of gaso-

line, freight rates, differentials in price to wholesalers and retailers, the cost and expense of production and sale, etc. The information thus collected was made available for use by the Commissioner of Finance and Taxation in the regulation of prices at which gasoline might be sold in the State of Tennessee. Permits for such sale were to be issued subject to the approval of the Commissioner, but only at the prices fixed and determined. Prices were to be fixed with a proper differential between the wholesale and retail price. Rebates, price concessions and price discrimination between persons or localities were forbidden. The prices were first to be stated by the applicant for a permit, and if not approved by the superintendent of the division were to be determined by that official, with a right of review by the commissioner, and finally by the courts. (See Public Acts of Tennessee, 1927, page 53.) A violation of the Act was made a misdemeanor and was punishable by fine and imprisonment.

Some of the headnotes of the case are as follows:

> "The business of dealing in gasoline, whatever its extent, is not a business 'affected with a public interest'; and State legislation undertaking to fix the prices at which gasoline may be sold, violates the due process clause of the Fourteenth Amendment."
>
> "A State may not impose as a condition on the doing of local business by a foreign corporation that it relinquish rights guaranteed by the Federal Constitution."
>
> "The provision of the Act forbidding any dealer to grant any rebate, concession or gratuity to any purchaser for the purpose of inducing him to purchase, use or handle the dealer's gasoline, and the provision forbidding discrimination by selling at different prices to purchasers in the same or in different localities, are

likewise mere appendants to the main purpose of price regulation, or if, separable, they are unconstitutional restrictions on the right of the dealer to fix his own prices. *Fairmont Co. v. Minnesota,* 274 U. S. 1."

In the opinion at page 240 this Court held:

"In support of the act under review, it is urged that gasoline is of widespread use; that enormous quantities of it are sold in the State of Tennessee; and that it had become necessary and indispensable in carrying on commercial and other activities in the State. But we are here concerned with the character of the business, not with its size or the extent to which the commodity is used. Gasoline is one of the ordinary commodities of trade, differing, so far as the question here is affected, in no essential respect from a great variety of other articles commonly bought and sold by merchants and private dealers in the country. The decisions referred to above make it perfectly clear that the business of dealing in such articles, irrespective of its extent, does not come within the phrase 'affected with a public interest.' Those decisions control the present case."

If This Statute Be Upheld as Enacted Pursuant to the State's Police Power, Its Effect Is Unreasonable, Arbitrary and Capricious.

In *Nebbia v. New York,* 291 U. S. 502, the majority of this Court held the particular New York statute there involved to be a reasonable and proper exercise of the State's police power.

In the case at bar, there was no investigation of the subject of tobacco marketing in Georgia. Georgia is probably the

last State in the Union to become a tobacco market. The people who passed the purported Act here involved knew little of it. There were no emergent circumstances at hand. The tobacco crop for 1935 was one of the State's largest. The prices charged by the warehousemen were fair. There was no demand for the regulation by the tobacco growers. There was no Board or Commission created to constantly exercise jurisdiction over this subject. The General Assembly of Georgia by the purported Act made hard and fast prices for the services of auctioning and weighing and handling tobacco. It reduced the prices for these services. The purpose of the Act is not to regulate the business, but simply to reduce those fees. There are many circumstances which constantly change in reference to the quantity of tobacco. First, the amount grown in Georgia; second, the amount grown elsewhere; third, regulation by the Government of the amount planted, the price which the crop as a whole brings, the price at which a part of the crop is sold, the effect of weather and crop disease. Each one of these things affects the return to the appellants. No one of them was taken into consideration by the General Assembly. The amount of money invested in this business was neither ascertained nor shown to any legislative committee.

In the Nebbia case, there was a long investigation, many witnesses were examined, more than twenty-three hundred pages of testimony were taken; the value of the property used in the dairying business in New York was ascertained; the conditions under which the business was conducted were carefully ascertained in great detail. A board having jurisdiction over the subject of dairying was created.

In the case at bar, the prices for the services rendered were decreased, and this came about without any investigation of the circumstances under which the services affected are rendered; of the profits, if any, of the appellants; of the value of the property devoted to this service. The result of this is that the effect of the Act is unjust, unreasonable and arbitrary.

It will be remembered that in the note to the Nebbia case it is shown that this Court thought that the regulation of the businesses referred to was condemned, because the statutes involved were unjust, unreasonable and arbitrary. When we compare what was done in the case at bar with what was done in the cases referred to in the Nebbia case, and hereinbefore discussed, we find that in the case at bar there is more of unreasonableness, more injustice, and more of arbitrariness than in any of those cases.

The first act of injustice in the case at bar is that the prices were fixed without consideration of the value of the services for which they were fixed or of the product involved. These prices were fixed—reducing the former charges—without considering the circumstances under which a tobacco warehouseman conducts his business. They were fixed without considering the changing circumstances surrounding this business, which are wholly beyond the control of the appellants and which come from season to season and to which reference has already been made.

The prices fixed in the purported Act are unjust, for the reason that they are hard and fast. No board or commission was appointed to have jurisdiction over the subject matter.

This Court states in *Norfolk & Western Railway Co. v. Public Service Commission of West Virginia*, 265 U. S. 70, at 74:

> "The validity of regulatory measures may be challenged on the ground that they trangress the Constitution; and thereupon it becomes the duty of the court, in the light of the facts in the case, to determine *whether the regulation is reasonable and valid or essentially unreasonable, arbitrary, and void.*" (Italics ours.)

This Court cites *Burns Baking Co. v. Bryan*, 264 U. S. 504, as supporting authority.

In *Weaver v. Palmer Bros. Co.*, 270 U. S. 402, a State law forbade the use in comfortables of shoddy even when sterilized. The Court held the statute arbitrary and unreasonable. The headnotes contain the following:

> "Legislative determinations are entitled to great weight; but it is always open to interested parties to show that the legislature has transgressed the limits of its power.
>
> "Invalidity of a legislative act may be shown by things that may be judicially noticed, or by facts established by evidence, the burden being on the attacking party to establish the invalidating facts."

This Court, at page 415, held:

> "The business here involved is legitimate and useful; and, while it is subject to all reasonable regulation, the absolute prohibition of the use of shoddy in the manufacture of comfortables is purely arbitrary and violates the due process clause of the Fourteenth Amendment."

This Court cites *Adams v. Tanner*, 244 U. S. 590, 596;

Meyer v. Nebraska, 262 U. S. 390; *Burns Baking Co. v. Bryan*, 264 U. S. 504.

In *Washington ex rel Seattle Title Trust Co., Trustee, etc., v. Roberge, Supt. of Building of Seattle*, 278 U. S. 116, a zoning ordinance was under consideration. In the first headnote it is stated:

> "Zoning measures must find their justification in the police power exerted in the public interest; unnecessary and unreasonable restrictions may not be imposed upon the use of private property or the pursuit of useful activities."

The opinion, at page 121, states:

> "Legislatures may not, under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities." Citing *Lawton v. Steele*, 152 U. S. 133, and many other cases which have been heretofore cited.

THE POWER OF THE COURTS IS NOT CONCLUDED BY ACTS OF THE LEGISLATURE.

This subject was recently reviewed by this Court in the case of *Borden's Farm Products Co., Inc., v. Baldwin, Commissioner*, 293 U. S. 194. At page 209 of this decision it is held:

> "Respondents invoke the presumption which attaches to the legislative action. But that is a presumption of fact, of the existence of factual conditions supporting the legislation. As such, it is a rebuttable presumption. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78-80; *Hammond v. Schappi Bus Line*, 275 U. S. 164,

170-172; *O'Gorman & Young v. Hartford Insurance Co.*, 282 U. S. 251, 256-258. It is not a conclusive presumption, or a rule of law which makes legislative action invulnerable to constitutional assault. Nor is such an immunity achieved by treating any fanciful conjecture as enough to repel attack. When the classification made by the legislature is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary. *Lindsley v. Natural Carbonic Gas Co.*, supra; *Clarke v. Deckebach*, 274 U. S. 392, 397; *Lawrence v. State Tax Comm'n*, 286 U. S. 276, 283. The principle that the State has a broad discretion in classification, in the exercise of its power of regulation, is constantly recognized by this Court. Still, the statute may show on its face that the classification is arbitrary (*Smith v. Cahoon*, 283 U. S. 553, 567) or that may appear by facts admitted or proved. *Southern Ry. Co. v. Greene*, 216 U. S. 400, 417; *Air-Way Electric Corp. v. Day*, 266 U. S. 71, 85; *Concordia Insurance Co. v. Illinois*, 292 U. S. 535, 549. Or, after a full showing of facts, or opportunity to show them, it may be found that the burden of establishing that the classification is without rational basis has not been sustained. *Lindsley v. Natural Carbonic Gas Co.*, supra; *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342; *Radice v. New York*, 264 U. S. 292; *Clarke v. Deckebach*, supra; *Ohio Oil Co. v. Conway*, 281 U. S. 146; *Tax Commissioners v. Jackson*, 283 U. S. 527. But where the legislative action is suitably challenged, and a rational basis for it is predicated upon the particular economic facts of a given trade or industry, which are outside the sphere of judicial notice, these facts are properly the subject of evidence and of findings. With the notable expansion of the scope of

governmental regulation, and the consequent assertion of violation of constitutional rights, it is increasingly important that when it becomes necessary for the Court to deal with the facts relating to particular commercial or industrial conditions, they should be presented concretely with appropriate determinations upon evidence, so that conclusions shall not be reached without adequate factual support."

THE POWER OF THE STATE TO REGULATE A BUSINESS MUST BE REASONABLY EXERCISED.

This subject is expressed in *Banton, District Attorney, v. Belt Line Railway Corp.*, 268 U. S. 413, 421-422. There were involved in that case rates on certain commodities which constituted a part of the Company's business and not all of its business. The case was, therefore, similar to *Northern Pacific Ry. v. North Dakota*, 236 U. S. 585; *Norfolk & Western Ry. v. West Virginia*, 236 U. S. 605; and *Northern Pacific Railway v. Department of Public Works of Washington*, 268 U. S. 39. This Court in the *Banton* case, after referring to these cases, said:

"The State is without power to require the traffic covered by the fare enjoined to be carried at a loss or without substantial compensation over its proper cost. And such cost includes not only the expenditures, if any, incurred exclusively for that traffic, but also a just proportion of the expenses incurred for all traffic of which that in question forms a part. The cost of doing such business is not, and properly cannot be, limited to the amount by which total operating expenses would be diminished by the elimination of, or increased by adding, the transfer passengers in question. It would be arbitrary and unjust to charge to that class of business

only the amount by which the operating expenses were, or would be, increased by adding that to the other traffic carrier. Outlays are none the less attributable to transfer passengers because also applicable to the other traffic. Operating expenses which are incurred on account of all passengers carried, and which are not capable of direct allocation to any class, should be attributed to the transfer passengers in question in like proportion as such expenses are fairly chargeable to other passengers receiving like service. While the carrier has no constitutional right to the same rate or percentage of return on all its business, the State may not select any class of traffic for arbitrary control and regulation. Broad as is its power to regulate, the State does not enjoy the freedom of an owner. Appellee's property is held in private ownership; and, subject to reasonable regulation in the public interest, the management and right to control the business policy of the company belong to its owners. *Northern Pacific Railway v. North Dakota*, 236 U. S. 585, 595, 596; *Norfolk & Western Ry. v. West Virginia*, 236 U. S. 605, 609; *Interstate Commerce Commission v. Chicago, G. W. Ry.*, 209 U. S. 108, 119."

As far back as *Smyth v. Ames*, 169 U. S. 466, 526, it was held:

"In view of the adjudications these principles must be regarded as settled:

"* * * *

"2. A State enactment, or regulations made under the authority of a state enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law and deny to it the equal

protection of the laws, and would therefore be repugnant to the Fourteenth Amendment of the Constitution of the United States."

Again in that case, at page 527, this Court discussed the power of the railroad to make reasonable maximum rates and said:

> "These words (reasonable maximum rates) strongly imply that it was not intended to give a power to fix maximum rates without regard to their reasonableness. Be this as it may, it cannot be admitted that the power granted may be exerted in derogation of rights secured by the Constitution of the United States, or that the judiciary may not, when its jurisdiction is properly invoked, protect those rights."

It is true enough that this language was used in reference to a railroad. It applies no less to all other persons and corporations.

Reasonableness of the Charges Prescribed by the Act.

We have heretofore discussed the effect of the scale of charges prescribed by this Act on appellants' revenue under Point A, page 54, et seq. supra. It is apparent from the evidence there detailed that the scale of charges prescribed by the Act is unreasonable, arbitrary and capricious.

The End Sought to be Achieved by the Legislature Is Not Apparent.

This Court has held repeatedly that a police regulation must be aimed at an end that is legitimate and within the

scope of the Constitution and must be accomplished by means which are appropriate and plainly adapted to accomplish this legitimate end. It is not apparent from the Act itself what end is in view. Certainly if the aim of the statute was to put more money into the growers' pockets at the expense of the warehousemen, it is discriminatory and class legislation at its worst. Also no minimum rate is fixed which is arbitrary. If the aim of the statute was to reduce the number of warehouses in Georgia by means of price fixing, not only is the end unconstitutional but the means adopted are improper and unlawful. There is no attempt to make warehouses per se public utilities. There is no supervising body, such as the Public Service Commission, placed in charge of these rates, with a complimentary right of franchise; there is no hearing provided for at which the rates may be changed according to the fluctuation in price and production of the tobacco grown. Some of appellees' witnesses testified that they hoped by means of price reduction to limit the number of warehouses and thereby increase the length of the selling season. Certainly this is not a constitutional end and the means adopted are anything but appropriate.

The Evidence Shows the Enactment of the Statute Was Made Without Investigation.

The knowledge of the tobacco warehouse business of Representative Swindle, R. p. 464, and Senator Gaskins, R. p. 493, as well as Senator Milhollin, R. p. 449, as shown by their testimony, is scant. They were the co-authors of the statute under attack. They personally had never operated a warehouse, but all were growers of tobacco. Their knowledge can safely be said to represent the extent of the information

and facts before the Legislature at the time the statute was under consideration. Mr. Swindle's testimony with regard to this is found at R. p. 464, et seq., and on cross examination at R. p. 477, et seq. Mr. Gaskins' testimony is found at R. p. 496, and on cross examination at R. p. 504.

Senator Milhollin said in part, at R. p. 550:

> "I am at the present time Senator for the 46th District of Georgia and in the State Senate. I am one of the proponents of the tobacco warehouse charges bill passed by the recent session of the Legislature; I was interested in passing that bill. I devoted considerable time to it. I didn't devote any time to the study of the tobacco warehouse charges before the introduction and passage of that bill. I didn't make any investigation as to the charges running too high or too low for the farmer before pushing the legislation; I pushed it because it would lower the prices to the farmers and myself, a grower; to myself, a grower, and the farmers and others. Since then I have made a comparative study of it. From the study I have made of the charges of the tobacco warehouses, the present charges used in Georgia prior to the passage of this law, and from my experience in the ownership or part ownership of a warehouse and my experience in growing and marketing tobacco, I think the charges fixed by the law in Georgia are fair both to the warehouses and the farmers. There was not any considerable demand among the people of my Senatorial District, among the farmers and growers, for a reduction in warehouse charges, not to me there was not. I don't know where there was over the tobacco belt a considerable demand to that effect before that time or not. Since that time there has been quite a demand for reduction of the charges. I don't know whether or not the growers had been to the other representatives

and senators making an effort to reduce charges by law in previous legislatures; I don't know about that."

The reason for the passage of the Act may be found in the testimony of Senator Gaskins, who testified at R. p. 493, as follows:

"As a contrast between the living conditions of the two, the majority of the growers that grew this tobacco for the period from 1930 including 1930 and up to 1934 and in lots of instances the growers of 1934, the majority of the farmers are ragged and were short of clothes during this depression and their fences were broken, rotten and down and to a large extent their mules are in bad condition, houses in bad repair; and the warehousemen and their skilled help, as they describe it, stay in the best hotels, wear better clothes than the majority of the growers can muster up on Sunday, for everyday. (R. p. 503.)

"The majority of the farmers or growers ride in wagons, old wagons with the tires about gone, or ride around in Hoover carts. That is a cart made out of two wheels off of an old automobile. The majority of the tobacco warehousemen and their skilled hired help, as they describe them, ride by in automobiles and drive them at high speed at what we country people usually call reckless.

"Taking it as a whole, the majority of the growers, their recreation is mighty limited. Any recreation for them or their families is mighty limited. If they go fishing occasionally, it is all right. These warehouse operators expend a great deal in expenses, having barbecues prepared for them. Some of my help on my farm has been hired to prepare big barbecues for them.

"The majority of them are constantly out hunting in my section. Some of them have bought high-priced bird

dogs, when the tobacco grower can hardly buy enough of the necessities of life; and they spend money recklessly for things that would be classed by the usual tobacco grower as really unnecessary.

"I would answer that in this way, that if the average tobacco grower spent money as recklessly and with as little consideration as the warehousemen and skilled labor that have operated the warehouses in this town here—that, if he spent money that reckless, he could not operate. Well, I will change that by saying this: I will say this: He could not get money to spend that way. If he had enough money to spend that reckless he could not last any time in the farming business and tobacco growing business." R. p. 503.

We submit the foregoing testimony for the purpose of showing in what strange and irrelevant circumstances the bill involved in this case originated in the General Assembly of Georgia. This evidence is quoted without reference to any evidence which has been given by other witnesses in regard to it.

CONCLUSION

Our State and National governments are *constitutional* democracies and not *legislative*. The Constitution of the United States and the Constitution of the State of Georgia are contracts or compacts of the people with themselves and with each other.

There is no provision in the Constitution of the State of Georgia, approved by the Georgia citizens, that warehouses, much less tobacco auction places, are public businesses, public utilities, as was true with regard to grain elevators in the Munn case. There is no showing of any evil, any persistent and palpable frauds in this business as carried on in Georgia. The Legislature by its enactment of this statute regulating tobacco warehouse charges in effect declares this business to be a public business. If limitation of the State's power is found at all in the Commerce Clause and Fourteenth Amendment of the Constitution of the United States, the facts of this case demand a holding that the statute is beyond the power or, at all events, an improper exercise, of power by the General Assembly of the State of Georgia.

Respectfully submitted,

J. O. GIBSON,
E. KONTZ BENNETT,
E. K. WILCOX,
ROBERT C. ALSTON,
WM. HART SIBLEY,

Counsel for Appellants.

April 26, 1937.

C.

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SUPREME COURT OF THE UNITED STATES

October Term, 1936.

No. 781

C. R. TOWNSEND AND PARK BERNHARD, A PARTNERSHIP KNOWN AS TOWNSEND & BERNHARD, DOING BUSINESS AS COOK COUNTY WAREHOUSE, ET AL.,

Appellants,

vs.

M. J. YEOMANS, ATTORNEY GENERAL FOR THE STATE OF GEORGIA, ET AL.,

Appellees.

BRIEF FOR APPELLEES

M. J. YEOMANS,
Attorney General

O. H. DUKES,
Assistant Attorney General

L. W. BRANCH,
Attorneys for Appellees.

April 26, 1937.

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IN THE

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C. R. TOWNSEND AND PARK BERNHARD, A PARTNERSHIP KNOWN AS TOWNSEND & BERNHARD, DOING BUSINESS AS COOK COUNTY WAREHOUSE, ET AL.,

Appellants,

vs.

M. J. YEOMANS, ATTORNEY GENERAL FOR THE STATE OF GEORGIA, ET AL.,

Appellees.

No. 781

BRIEF FOR APPELLEES

STATEMENT OF CASE

In this case there is brought in question the constitutional validity of an Act of the General Assembly of Georgia, approved March 28, 1935, regulating the operation of tobacco warehouses in the State of Georgia and fixing the maximum amount of fees and commissions which may be charged by tobacco warehousemen for services rendered the growers. (Ga. L. 1935, pp. 476, 477, 478.) A copy of the Act is attached to the Bill of Complaint, marked Exhibit A (R. 15). A copy is also set out in Appellants' brief.

There are forty-four complainants, all being members of the Association of Georgia Tobacco Warehousemen and constituting all of the persons and corporations engaged in the operation of tobacco warehouses in the State of Georgia at the time the Bill of Complaint was filed in 1935. Others engaging in the business since that time have been made parties by intervention. The defendants are M. J. Yeomans, as Attorney General of the State of Georgia, and the several Solicitors General of the Superior Courts of the Judicial Circuits in Georgia in which tobacco warehousemen operate, the Solicitors of the City Courts of the several counties comprising the Bright Leaf Tobacco Belt, and the sheriffs of the several counties included in said Tobacco Belt. By their bill as amended, appellants assert that the Act contravenes Article 1, Section 8, Paragraph 3 of the Constitution of the United States and also the due process of law clause of the Fourteenth Amendment.

Appellees justify the Act as a proper and legitimate exercise of the police power of the State of Georgia. They further contend that the Act does not, either as to form or operative effect, unconstitutionally burden or interfere with interstate commerce.

A brief statement of the nature of the Bright Leaf Tobacco industry and the manner in which tobacco warehouses are operated, as disclosed by the petition as amended and the evidence, is necessary, as we think, in the determination of the issues presented and such statement will be made although it may be necessary in the course of argument to refer to certain parts of the record in greater detail.

The industry as a whole is confined to the States of North Carolina, South Carolina, Virginia, Georgia, and in addition thereto small quantities are grown in Kentucky and Tennessee. North Carolina leads all other states in production insofar as

volume and value are concerned. South Carolina comes second and in the Carolinas and Virginia the industry is one of long standing. See Court's finding of fact, paragraph 5 (R. 77). Approximately twenty years ago it was discovered that the soil in certain parts of South Georgia is adapted to the growth of Bright Leaf Tobacco. The industry began to assume noticeable proportions about the year 1917. The infant industry in Georgia was nurtured by the tobacco interests of the old tobacco states, particularly North Carolina, South Carolina and Virginia. The growers availed themselves of the experience of the growers in other states and it appears that for a number of years supposed experienced tobacco growers, called "demonstrators" were employed by the Georgia growers to advise and assist in the growing and curing of their crops. See Paragraph 5 Court's finding (R. 77). The manufacture of tobacco is concentrated in the hands of only a few companies and accordingly there are only a few prospective buyers. The buyers or manufacturers are in position, in part, at least, to restrict or dominate the local markets. An example of this is the fact that the buyers will furnish to any one market only two sets of buyers, (evidence F. W. Brown, R. 190) and in cooperation with the warehousemen fix the date on which the markets open and, in effect, determine the date on which it closes (evidence F. W. Brown, R. 196), Court's finding, Paragraph 7 (R. 79). All these things considered, it was but natural that the system which had prevailed in the older states for the marketing of tobacco with its attendant vices and virtues, if any, should be adopted in Georgia. Some of those who had operated tobacco warehouses in the older states, or had been connected with the operation of such warehouses there, came forward to Georgia with the advance of the industry in this new field and opened warehouses in and through which the Georgia crops might be sold. These operators did not make the State of Georgia their home but remained only during the tobacco warehouse selling season and then re-

turned to their homes and businesses in other states. Accordingly, a large portion of the Georgia crop from year to year has been, and now is, sold in warehouses operated by proprietors who have no local ties whatever. With them self-interest has not the restraints which local ties or community interests beget. Under such conditions the sole pecuniary interest of the individual operator might easily become the sole motive that dominates his financial operation, with the usual attendant conditions of imposition, excessive charges and inferior service.

The development of a new industry also usually attracts those who are disposed to speculate and exploit. The development of the tobacco industry in Georgia has not been free from these elements. The actual result of this motive operating throughout the territory was the construction of warehouses and opening of markets faster than the territory grew and at other places in the center of the territory the construction of warehouses was out of proportion to the appropriate needs of the industry. For instance, in the year 1931, 51 warehouses made reports to the Commissioner of Agriculture from 21 separate points or markets. By 1933 the number of warehouses in the territory making reports had been reduced from 51 to 43 and the number of points from which these reports came had been reduced from 21 to 15. See consolidation of reports to Commissioner of Agriculture, complainants' Exhibits Nos. 5 to 8 (R. 666 to 669). It is also shown without contradiction in the evidence that markets were opened during these years at Bainbridge, Cairo, Thomasville, Quitman, Camilla, Claxon, Fitzgerald, and probably other points, and that the markets in all of these places have been discontinued. In 1934 there were 39 warehouses reporting to the Commissioner of Agriculture from 15 separate markets and in 1935 the number of warehouses had increased to 44, all reporting from the same 15

markets. See consolidation of reports to Commissioner of Agriculture (R. 668-669).

Nevertheless the nature of the industry and the scope of the territory permit the handling of the volume of crops from year to year by comparatively few warehouses. As stated before, there were only 44 operating during the year 1935 when the Bill of Complaint was filed and in prior years the number had been fewer. This condition easily admits of combinations on the part of the warehousemen with respect to their operation and agreements with respect to their charges.

The grower carries his tobacco to the warehouse of his choice. It is placed on the floor for sale and all sales are conducted by auction. In the normal and customary course of marketing tobacco in Georgia, the grower can only sell his tobacco in warehouses located in the tobacco belt. See Court's finding, paragraph 8. (R. 79). Evidence B. B. Saunders (R. 147), evidence F. W. Brown (R. 189). All warehouses are conducted in the same manner. The grower has no option save to offer his crop in some one of the warehouses in the belt, all operating according to the same method. From the beginning of the industry charges for services rendered to the grower by the warehouseman have been practically uniform throughout the territory. The only competition as between the warehousemen themselves is the claim that the one warehouseman can, either by personal influence or mental acumen induce or force the buyers to give a better price for the same grade of tobacco than the other warehousemen can procure for a like grade of tobacco. About the year 1927, by a concert of action or common consent, the schedule of charges for services of warehousemen to the grower in the sale of his tobacco was brought to a uniform level throughout the Georgia belt and in most instances the prices charged were raised. Evidence R. E. Currin (R. 527,

528), evidence W. D. Dickerson (R. 560-564), evidence H. B. Wallace (R. 324). Complainants' original bill, paragraph 8 (d) (R. 9). Evidence F. W. Brown (R. 187 and 188). Defendants' Exhibits 1-A, 2-A and 3 (R. 624, 634, 644). Defendants' Exhibits 8 (R. 657), 9 (R. 659), 10 (R. 662). The only competition between the warehousemen is in contacts, kindness, courtesy and service to the grower. There is no competition as to charges. Evidence F. W. Brown (R. 191).

So that when the Act here under attack was passed appellants had and were observing a common, uniform charge for services and such charge had been in effect for a number of years prior thereto.

In addition, among the warehousemen, there had been organized what is known as the Tobacco Warehousemen's Association, of which all appellants are members. Indeed, the prosecution of this suit is an organized fight through the Warehousemen's Association. Evidence F. W. Brown (R. 197). The growers are not eligible for membership. Evidence F. W. Brown (R. 196). The Association and buyers determine the date the market in Georgia opens and substantially determine the date on which it closes. Evidence F. W. Brown (R. 196). The Association undertakes to deal with such practices as affect the interests of the members and adopt regulatory rules to be observed by such members. Evidence F. W. Brown (R. 189). A new member is admitted when he becomes identified with the tobacco warehouse business in Georgia and promises to be governed in his charges by the schedule of fees then in effect throughout the State of Georgia as fixed by the Association. Evidence H. B. Wallace (R. 325). On page 94 of the minutes of the Association of the meeting of May 8, 1934, the following entry appears:

"The secretary was requested to read letter of president

Brown to Mr. J. C. Lanier requesting that no reduction be made in commissions or charges by the Georgia Warehousemen for the year 1934 season. After discussion of the matter it was decided that no changes should be made in charges, but that if any were made it would be higher instead of lower." (R. 652).

See also paragraph 20 of Court's finding and note that no exception is taken to any statement of fact set out in said paragraph. Appellants exception to this paragraph relates only to the last sentence to the effect that appellants "through the Warehousemen's Association and their common agreement as to fees to be charged by them for services rendered maintain and enjoy a 'virtual' monopoly in the field covered by their operations." See assignment of error No. 6 (R. 102). There is no challenge as to the correctness of any other finding of fact set out in paragraph 20 of the Court's finding.

Furthermore, it appears that wasteful practices had developed in the operation of the warehouses. For instance, many of the warehousemen were undertaking, as a part of their warehouse services, to haul the tobacco of some of the growers from the farm to the market. While it appears from the evidence that the warehousemen themselves had undertaken through their association to eliminate this practice, it nevertheless is shown that some of the warehousemen, even during the year 1935, by indirection, were following a practice which the Association itself condemned: Evidence R. E. Lyddanne (R. 217), evidence J. C. Meadors (R. 383-384), evidence J. M. Easterly (R. 266). Other wasteful practices, particularly in the matter of employing what are called solicitors had developed. A large part of the work of the so-called solicitors can not be held to be a part of the warehouse service and is indeed without any value whatsoever to the grower. Evidence of Park Bernard (R. 377).

Evidence of John S. Bernard (R. 408). A practice of loaning or advancing money by warehousemen to faithful customers had also developed and the losses, if any, sustained were charged as a part of the operating expenses of the warehousemen. Evidence J. M. Easterly, (R. 266), evidence R. A. George (R. 332), evidence W. W. Bernard (R. 341). These practices when followed resulted necessarily in discrimination as between the tobacco growers and made the burden which they severally bear for the services as a whole unequal.

In addition, the tobacco industry in South Georgia has developed into one of the paramount industries of the state. See complainants' amendment, page 10 (R. 41). A large number of the citizens of South Georgia are growers of tobacco and accordingly are vitally and immediately interested in the industry and as well in the service rendered by warehousemen and charges made for such services. See Court's finding, paragraph 5 (R. 77), and on the whole there existed at the time of the passage of the Georgia Act a situation or combination of circumstances materially restricting the regulatory force of competition so that the growers were placed at a disadvantage with respect to the amount charged for service rendered in the sale of tobacco grown by them from year to year.

By the second amendment to the Bill of Complaint (R. 52), it is charged that the handling and sale of tobacco on the floors of the warehouses are transactions in interestate or foreign commerce and that the State of Georgia, as appellants contend, is without power to tax or otherwise put a burden upon or regulate such commerce.

A determination of this question necessarily requires an examination of the facts as to the manner in which tobacco is received and sold in the warehouses and a brief statement of

the facts relating to this issue will be made at this time. The manner of marketing loose leaf tobacco in Georgia as disclosed by the Record and the evidence in this case is as follows:

After the tobacco is taken from the stalk and cured, the grower grades the leaves into piles, which are usually tied up in burlap sheets to be taken to the market. When the selling season opens, he loads the tied up piles of tobacco on a conveyance and transports them to the town or market where he desires to offer his tobacco for sale.

Upon reaching the warehouse of his choice, the tobacco is unloaded from the conveyance, the sheets are removed from the piles, and the amount contained in each sheet is placed on a flat basket. The basket is then placed on a hand truck and trucked to the scales for weighing. A card showing the name of the grower and the weight of the pile of tobacco in each particular basket is then placed on top of the pile. The basket containing the tobacco with the identifying card is then trucked by hand to the warehouse floor and the baskets are placed in parallel rows, preparatory to the auction sale. The tobacco then remains on the floor for a period of time varying from a few hours to several days. That is to say, it remains on the floor until the buyers, in their round of buying from warehouse to warehouse, reach the particular warehouse for the auction sale. For the service incident to the handling and weighing of the tobacco as thus set out, a charge is made by the warehouseman to the grower and the portion of the statute prescribing the maximum charge for this service is one of the items under attack in this suit.

When the buyers representing the different tobacco companies reach the warehouse where the tobacco has been placed on the floor the sale begins, and an auctioneer furnished by the

warehouseman proceeds along each row and auctions off each pile of tobacco to the highest bidder. The warehouseman bids on and buys some of the tobacco in order to boost the price at his warehouse. And when tobacco is bought by him in this manner it is usually held for several days or weeks until he considers the time opportune to sell it and he then places it on the floor and offers it for sale at auction. If the price bid for any particular basket of tobacco is unsatisfactory to the grower, he merely follows the auction sale and within a reasonable time turns the identifying card face down and this act according to the customs of the trade indicates that the offer submitted is rejected. Under the custom of the business he is permitted then to remove his tobacco from that warehouse, or to place it in some position so that the auctioneer will reach it again in the same sale or at a later sale. The grower indicates his willingness to accept the offer by failing, within a reasonable time, to turn the identifying card face down.

Thus the legal effect of the transaction is that the auctioneer representing the warehouseman only receives a proposal from the proposed purchaser and, in fact, no sale is actually completed until after such proposal is accepted by the grower. The grower thereby maintains absolute control and dominion of his tobacco throughout the whole process and until after the warehouseman has performed all of the service to the grower which he is supposed to perform for him.

If the offer of the proposed buyer is accepted by the grower the particular pile of tobacco is within a reasonable time taken charge of by a representative of the buyer and trucked to one side of the warehouse with a view of being shipped. At the time the purchase is completed, there is no ascertained destination of the tobacco involved in any particular transaction. The purchaser has absolute control and dominion over it and may

subsequently ship it out of the State of Georgia or to a point in the State of Georgia or may store it in the city where it is bought or do none of these things as he elects. While it is true that most of the tobacco buyers who participate in the tobacco sales are employees of the large tobacco companies and while it is also true that there are no cigarette manufacturing plants in Georgia, it is shown that some of the large buyers first ship the tobacco purchased by them respectively to redrying plants located in the State of Georgia. Others, within a short time after the purchase, ship the tobacco to points outside the state. The record does not disclose the percentage of the tobacco sold on the Georgia market which is first shipped to redrying plants in that state. (Evidence F. W. Brown, R. 191, and Evidence of A. W. Jeffries, R. 414.)

Reverting for a moment to the procedure in connection with the sales of the tobacco by the warehousemen in the tobacco warehouses it should be noted that the warehouseman, after the sale is made, furnishes each grower with a statement of the sales completed for the grower and this statement shows the weight of each pile sold, the price per pound paid, the price of the entire pile and the sum of all the piles, the amount of warehouse charges deducted and the net proceeds. The warehouseman, for the purchaser, remits to the grower the net proceeds and retains for himself the amount of the warehouse charges deducted.

It is the charge made by the warehouseman to the grower for this combined service as warehouseman that the Georgia statute attempts to regulate. The statute only undertakes to fix the maximum amount that may be charged as commission on the sale value of the tobacco, the auction fee and the fee or charge for weighing and handling. Further than this it does not attempt to go and it is quite clear that the regulation relates

solely to the transaction between the grower and the warehouseman. No complaint is made as to any features of the Act except the parts prescribing the maximum charge for weighing and handling and the auction fee. (Paragraph 6, Bill, R. 9.)

The statute does not attempt to regulate or affect the business of the purchaser. It does not undertake to prescribe when the tobacco purchased by him shall be transported out of the State or how it shall be transported or to what place it shall be transported. It does not undertake to prescribe the minimum price that the purchaser shall pay for the tobacco purchased by him or how he shall use it or where he shall use it or what profit he shall make on his purchase. The Act does not undertake to interfere with the prompt, safe and convenient transit of the tobacco purchased from the State of Georgia to any other place in or out of the state by one who wishes to transport it. The Act does not undertake to set up any economic barrier between the State of Georgia and any other state or foreign country and it does not undertake to create any condition of economic isolation as between the State of Georgia and any other state, territory, or foreign country. After the purchase of the tobacco by the purchaser he may hold it at his pleasure, ship it at his pleasure, use it at his pleasure, and make from such use and manufacture as much profit as he can. The statute does not affect either directly or indirectly, proximately or remotely, the price the purchaser pays or offers to pay. The terms of the Act do not relate to or undertake to regulate in any respect whatever the business of the purchaser. It exacts of him no tax, and as to him makes no requirement.

On the contrary the regulation prescribed by the statute relates to and affects only the transaction between the grower and the warehouseman. The grower resides in Georgia, he produces his tobacco in Georgia, the warehouseman's business

is located in Georgia and the transaction between the grower and the warehouseman with which the statute deals all take place and are completed within the limits of said State.

SUMMARY OF ARGUMENT

I.

THE ACT DOES NOT BURDEN INTERSTATE COMMERCE IN CONTRAVENTION OF THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION EITHER IN FORM OR EFFECT. (pp. 16 to 56.)

This contention is sound because:

1. The transactions which the statute undertakes to regulate are not interstate transactions but are local to the State of Georgia both in their inception and execution. The engagement between the warehouseman and grower is completed before interstate commerce begins. The transactions involved are wholly intrastate. (pp. 16 to 33.)

2. If it be held, however, that the transactions between the growers and warehousemen regulated by the statute fall within the scope or concept of interstate commerce, the burden on or interference with such commerce caused by the enforcement of the act, if any, is only indirect, accidental, incidental, secondary, remote and not substantial and arises outside of the scope and purpose of the Act and consequently does not unconstitutionally burden or interfere with such commerce. (pp. 33 to 42.)

3. Cases cited and relied on by appellant discussed and distinguished. (pp. 42 to 56.)

II.

IN THE EXERCISE OF ITS POLICE POWER THE STATE OF GEORGIA MAY FIX MAXIMUM CHARGES TO BE MADE BY TOBACCO WAREHOUSEMEN FOR SERVICES RENDERED THE GROWER. (pp. 56 to 83.)

This contention is sound because:

1. The power exercised is one properly falling within the police power of the State as that term has been defined and applied. (pp. 56 to 57.)

2. The business of tobacco warehousemen may be regulated even to the extent of prescribing maximum charges for the services rendered because the business as conducted is "affected with a public interest" and for adequate reasons is subject to legislative control and regulation. (pp. 57 to 83.)

III.

THE ACT IS NOT IN EFFECT UNREASONABLE, ARBITRARY OR CAPRICIOUS FOR ANY REASON ASSERTED. (pp. 83 to 91.)

The act cannot be held to be arbitrary, unreasonable and capricious as claimed by appellants on the asserted ground that no investigation of the subject of tobacco marketing in Georgia was made by the legislature prior to the enactment of the statute or that the legislative body was not informed as to the nature of the industry or that there was no demand for regulation by the growers themselves or that the act was not passed in response to an emergency. These are all matters addressing themselves to the legislative body and are foreclosed by the enactment of the law. Further the act is not unreasonable, arbitrary or capricious as claimed by appellants on the asserted ground that no board or other body was created to ascertain the facts or

that the statute undertakes to prescribe a hard and fast schedule of fees to be charged. (pp. 83 to 91.)

IV.

THE ALLEGATIONS OF THE BILL AS AMENDED AND THE EVIDENCE ADDUCED ARE INSUFFICIENT TO PRESENT A FEDERAL QUESTION WITH REFERENCE TO THE ALLEGED UNREASONABLENESS OF THE GEORGIA ACT FROM THE STANDPOINT OF THE REVENUE PERMITTED THEREUNDER. (pp. 91 to 102.)

This contention is sound because:

1. No sufficient facts are set out in the bill as amended to authorize the Court to pass upon the question of the reasonableness of the schedule of fees from the standpoint of revenue permitted. (pp. 95 to 97.)

2. Appellants undertake en masse and by the group to attack the act as unreasonable on the ground that the revenue permitted is insufficient. The question of the reasonableness of the act from this standpoint can be raised only by the individual proprietor or unit. The attack cannot be made in the aggregate or by groups. The group cannot make the attack for itself of for the individual and one individual cannot make the attack for another individual. (pp. 97 to 102.)

V.

PRESUMPTION AND BURDEN OF PROOF. (pp. 102 to 114.)

Appellants have failed to carry the burden placed by law upon them. (pp. 103 to 114.)

VI.

CONCLUSION. (p. 114.)

ARGUMENT

I.

THE ACT DOES NOT BURDEN INTERSTATE COMMERCE IN CONTRAVENTION OF THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION, EITHER IN FORM OR OPERATIVE EFFECT.

Appellants allege that the Act in question contravenes the commerce clause of the Federal Constitution. Their position in this respect is based on the contention that when the leaf tobacco of the grower is brought into the respective warehouses of appellants, it is placed on the floor in long rows to be offered for sale and is to be shipped out of the State by the purchaser when sold; that there are no tobacco manufacturing places in Georgia and none of the tobacco sold at the respective ware houses of appellants is manufactured in the State of Georgia and was not so manufactured in 1935; that it is the intent and purpose to sell the leaf tobacco to corporations or persons living out of the State of Georgia and that shipments are to be made out of the State of Georgia as soon as the sales are completed. Upon the basis of such allegation (Second Amendment, R. 53) it is contended that the sales in the warehouses to the purchasers are transactions in interstate commerce and that the State of Georgia is without power "to tax or otherwise put a burden upon or regulate that interstate or foreign commerce." (See Second Amendment, R. 53.)

The contention is without merit. Neither the allegations of the bill nor the evidence bring the transactions within the protection of the commerce clause of the Federal Constitution.

1. TRANSACTIONS INVOLVED ARE INTRASTATE.

In the first place it is respectfully submitted that the transactions which the statute undertakes to regulate are not interstate

in character but are local to the State of Georgia. They are local both in their inception and in their execution. They are wholly intrastate.

In some cases the courts have found it difficult to find the dividing line between purely local activities and such commerce as is protected by the commerce clause of the Federal Constitution but no difficulty has been found in such cases as that here presented.

It is to be remembered that we are not dealing now with transactions which take place in Georgia with reference to an article or commodity which had its origin in some other State, was transported into the State of Georgia, and the movement of which will be continued after the transaction in this State is completed, to still some other State. All that need be determined in this case is whether the legal incidents and characteristics of an interstate transaction have attached. In other words, does the interstate movement or transaction with reference to the tobacco industry, if any, begin before or after the transactions between the grower and the warehouseman are completed? This Court in many cases has pointed out when the interstate transaction begins and when it ends. One of the earliest cases is *Coe v. Erroll*, 116 U. S. 517 (1886).

In this case the Town of Erroll, New Hampshire, had imposed a general property tax upon certain logs which had been cut down in New Hampshire and were at the time being floated down the river to Lewiston, Maine, being temporarily detained in the Town of Erroll on tax day by low water. The question before the court was whether or not the New Hampshire logs, although intended for export and partially prepared for that purpose, were subject to tax in the same manner as other property in the State. The Court held that the commerce

clause did not relieve the logs from taxation, among other things, at page 526, saying:

> "Although intended for exportation, they may never be exported; the owner has a perfect right to change his mind; and until actually put in motion for some place out of the State, or committed to the custody of a carrier for transportation to such place, why may they not be regarded as still remaining a part of the general mass of property in the State?"

Prior to the time of the decision in the case of *Coe v. Erroll*, supra, this court had released the case of *Brown v. Houston*, 114 U. S. 622 (1885), and in that case had declared that where articles had been shipped into a State and had arrived at their destination, their interstate movement ceased and they were no longer entitled to the protection of the commerce clause against local taxation. Many years later in *General Oil Co. v. Crain*, 209 U. S. 211 (1908), the principles of these decisions were restated and combined in the following statement of the court:

> "The beginning and the ending of the transit which constitutes interstate commerce are easy to mark. The first is defined in *Coe v. Erroll*, 116 U. S. 517, to be the point of time that an article is committed to a carrier for transportation to the State of its destination, or started on its ultimate passage. The latter is defined to be in *Brown v. Houston*, 114 U. S. 622, the point of time at which it arrives at its destination." Page 229 of 209 U. S.

The identical question here involved was considered by this Court in the case of *Crescent Oil Co. v. State of Mississippi*, 257 U. S. 129 (1921).

In 1914 the State of Mississippi passed a law prohibiting all corporations, whether organized under the laws of that State or authorized by the laws thereof to do local business therein,

from owning or operating any cotton gin when such corporation is interested in the manufacture of cottonseed or cottonseed meal. The Crescent Oil Company was a corporation organized under the laws of the State of Tennessee and was doing business in the State of Mississippi. It was engaged primarily in the processing of cottonseed but in order to acquire sufficient amounts for its consumption it had adopted the plan of operating cotton gins so that it might be in position more readily to acquire the seed. It operated cotton gins in the State of Mississippi and it brought suit to enjoin the enforcement of the Act upon the ground, among others, that the law imposed a burden or tax upon interstate commerce. The basis of its contention was that it intended to place the cottonseed purchased or acquired by it in Mississippi in interstate commerce for transportation to the State of Tennessee or other States for use in the prosecution of its main business. The Act in question was purely regulatory. It had no features or provisions of a tax law. Obviously it was passed under the police power of the State.

This Court, at page 135 of 257 U. S., stated the question for determination in that case to be as follows:

> "Whether a cotton gin operated by an oil company in Mississippi is rendered an instrumentality of interstate commerce by the fact that the owner of it ships out of the State for its use in another State all of the cottonseed which may be purchased in connection with its ginning operation."

It is particularly to be noted in the case cited the cottonseed were purchased in the State of Mississippi with the intent and purpose to transport them to some other State for use therein, and coming directly to the question involved, this Court at page 136 of 257 U. S., said:

"The separation of the seed from the fiber of the cotton, which is accompanied by the use of the cotton gin, is a short but important step in the manufacture of both the seed and the fiber into useful articles of commerce, but that manufacture is not commerce was held in *Kidd v. Pearson*, 128 U. S. 1, 20, 21; *United States v. E. C. Knight Co.*, 156 U. S. 1, 12, 13; *Capital City Dairy v. Ohio*, 183 U. S. 238, 345; *McCluskey v. Marysville & Northern Ry. Co.*, 243 U. S. 36, 38; *Hammer v. Dagenhart*, 247 U. S. 251, 252; and in *Arkadelphia Milling Co. v. St. Louis Southwestern Ry Co.*, 249 U. S. 134, 151, 152. And the fact, of itself, that an article when in the process of manufacture is intended for export to another State does not render it an article of interstate commerce. *Coe v. Erroll*, 116 U. S. 517; *New York Central R. Co. v. Mohney*, 252 U. S. 152, 155. When the ginning is completed the operator of the gin is free to purchase the seed or not, and if it is purchased to store it in Mississippi indefinitely, or to sell or use it in that State or to ship it out of the State for use in another State, and, under the cases cited, it is only in this last case and after the seed has been committed to a carrier for interstate transport that it passes from the regulatory power of the State to interstate commerce and under the national power.

"The application of these conclusions of law to the manufacturing operations of the cotton gins, which we have seen precede but are not a part of interstate commerce, renders it quite impossible to consider them an instrumentality of such commerce, which is burdened by the Anti-Gin Act, and the first contention of the plaintiff in error must be denied."

A more recent case is *Federal Compress & Warehouse Company v. McLean*, 291 U. S. 17; 54 S. Ct. 267 (1933).

The State of Mississippi enacted a statute providing for an excise tax or annual license tax for the privilege of operating

a cotton compress, graduated according to the number of bales of cotton compressed per annum and also for an annual license tax to be levied upon each person operating a warehouse whether in conjunction with a compress or not, likewise graduated according to the storage capacity of the warehouse. Apellant, Federal Compress & Warehouse Company, was a Delaware corporation maintaining and operating cotton warehouses and compresses at Cleveland, Mississippi. It paid the tax under protest and brought suit to recover in the State court. The court of final appeal in the State having denied its claim, an appeal was allowed to the Supreme Court of the United States.

An agreed statement of facts discloses that the compress and warehouse company was licensed by the Secretary of Agriculture to conduct a warehouse for the storage of agricultural products under the provisions of the United States Warehouse Act and had given bond for the faithful performance of its duties; that Cleveland is a shipping point for baled cotton in interstate and foreign commerce and is a market in which cotton is purchased by brokers and dealers from those who produce it in the State. The purchases are made for resale or to fill contracts for sale of cotton without the State; that in the usual course of business the purchased cotton after it is ginned is transported to the warehouse for storage and compression, about 25% arriving by automobile truck or wagon and the remainder by rail over the line of the single railroad serving Cleveland; that upon delivery to appellant it issued its negotiable warehouse receipt for the cotton in form provided by the United States Warehouse Act; that the right to demand delivery of the cotton or otherwise control its disposition was reserved to the holders of the receipts; that from one to ten per cent of the cotton handled is resold, within the state to buyers who resell it to purchasers without the state and all except a negligible part of the cotton is ultimately shipped to points

outside the state; that when shipping orders are given by the holders of the warehouse receipts the compress company compresses the cotton into bales of standard weight and size suitable for shipment and delivers them to the rail carrier for interstate transportation; that the movement of the cotton out of the warehouse is directed by the owners of it who hold the warehouse receipt; that the compress charges are paid by the carrier which it adds to the charge for carriage and that where cotton is brought to the warehouse by rail carriage, the through interstate rail rate is applied from the point of origin to destination instead of the combination rate which is the sum of the intrastate rate to Cleveland and the interstate rate from that point to destination; that the destination of the cotton outside of the state is not determined until the owner gives shipping instructions to appellant and shipments are not made until surrender of the warehouse receipts; that by written agreement with the railroad company, the compress company is designated as the agent of the railroad to receive the cotton from and deliver it to the railroad and to load and unload the cotton upon and from its cars, and by the agreement it is also provided that the railroad may use the warehouse as a cotton depot.

The contention of appellant was that the tax was a forbidden burden on interstate commerce and unconstitutional for that reason.

Answering this contention the Court says:

> "It is clear that by all accepted tests the cotton, while in appellant's warehouse, has not begun to move in interstate commerce, and hence is not a subject of interstate commerce immune from local taxation. When it comes to rest there, its intrastate journey, whether by truck or by rail, comes to an end, and, although in the ordinary course of business the cotton would ultimately reach points outside the state, its journey interstate does not begin, and so

it does not become exempt from local tax until its shipment to points of destination outside the state. Before shipping orders are given it has no ascertainable destination without the state and in the meantime until surrender of the warehouse receipt it is subject to the exclusive control of the owner. Property thus withdrawn from transportation, whether interstate or intrastate, until restored to a transportation movement interstate has often been held to be subject to local taxation." Page 21 of 291 U. S.

Further the Court says:

"Here the privilege taxed is exercised before interstate commerce begins; hence the burden of the tax upon the commerce is too indirect and remote to transgress constitutional limitations. See *Nashville, Chattanooga and St. Louis Ry. Co. v. Wallace*, 288 U. S. 249. The case therefore stands on a footing different from those in which local regulations of the business of purchasing the commodity within and shipping it without the state have been deemed to impede or embarrass interstate commerce in those commodities. *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282; *Lemke v. Farmers Grain Co.*, 258 U. S. 50." Page 22 of 291 U. S.

In the cited case this Court points out that even the contract which the compress and warehouse company had with the railroad by which the company was designated as the agent of the railroad and the warehouse of the company was designated as the cotton depot of the railroad was insufficient to bring the transaction within the scope of the commerce clause of the Federal Constitution. In this connection the Court says:

"It is not within the power of the parties, by the descriptive terms of their contract, to convert a local business into an interstate commerce business protected by the interstate commerce clause." Page 22 of 291 U. S.

It is true that the Federal Compress & Warehouse Company case is a tax case, but the tax involved is not a property or ad valorem tax such as was involved in the case of *Bacon v. Illinois*, 227 U. S. 504, and which the Court in the case of *Chicago Board of Trade v. Olsen*, 262 U. S. 1, held might be levied notwithstanding the fact that the property affected thereby occupied such position in a current of interstate commerce that Congress might not inconsistently with the exercise of the right of taxation by the state regulate the entire course of the transaction under the power of the commerce clause of the Federal Constitution. The tax in the Bacon case was permitted on the theory that the property had come to rest in a current of interstate transportation and had become mixed with other property of the state and thereby subject to the property tax. The tax involved in this case, however, is a business tax and is levied on the privilege of doing business and if the transaction to which it relates could in any sense be held to be interstate the levy of the tax would necessarily be a burden on interstate commerce so that a transaction held to be intrastate in its nature when viewed in the light of a privilege or business tax imposed upon it must necessarily be held to be intrastate when viewed in the light of a regulation enacted by virtue of the state's police power.

The contention of appellants in the instant case that the transaction between the grower and warehouseman is interstate is based solely upon the contention that the tobacco in the usual and ordinary course of business will ultimately reach a point outside the state. The compress and warehouse company case, however, completely answers this contention. In the ordinary and usual course of business the cotton there involved ultimately reaches points outside the state but the Court held that the transaction does not become exempt from a local business tax until actual shipment. We find in this case a complete and perfect parallel of fact for the reason that before shipping

orders are given for the tobacco it likewise has no ascertainable destination without the state and it is subject to exclusive control of the owner.

A companion but perhaps stronger case is *Chassaniol v. City of Greenwood*, 291 U. S. 584, 54 S. Ct. 541 (1934).

The City of Greenwood, Mississippi, by ordinance laid a tax upon every person engaged in the business of buying or selling cotton for himself within the city. Chassaniol was engaged in such business in said city, paid the amount of tax under protest and sued to recover. His claim was denied by the State courts of Mississippi including the court of final appeal in that state and an appeal to the Supreme Court of the United States was allowed.

Report of the case discloses that Greenwood is a concentration point for long staple cotton and an active market for its purchase and sale. All of the cotton there dealt in is grown and ginned in Mississippi. It reaches the Greenwood warehouses about 70% by rail, the rest by automobile, truck or wagon. It is there compressed, substantially in the manner described in *Federal Compress & Warehouse Company v. McLean, supra.* Purchases and sales are made upon the market by transfer and delivery of warehouse receipts issued by the local warehouses. It is further disclosed that at Greenwood about twenty-five cotton buyers including Chassaniol each purchased and sold cotton for himself. In each case the buyer became the absolute owner and makes the profit or bears the loss. When he buys cotton in the warehouses at Greenwood he customarily has in hand and in mind orders or contracts for that particular grade for immediate or future delivery in other states or countries to the extent of about ninety per cent on the average of all cotton purchased by him. In the usual course

of the business there is about ten per cent which the buyer must purchase and which he cannot use to fill orders which he had in hand for shipment to other states and this small percentage he sells to other buyers and this, like the remaining ninety per cent, usually finds its way to some point of destination outside of the State of Mississippi. It will be remembered from a statement of the facts in the Federal Compress & Warehouse Company case that the charges of the warehouse and compress companies are added to the freight bill and that in a determination of the amount of freight the through rate from the original point of origin to the ultimate point of destination is allowed rather than the local rate from the point of origin to Greenwood and the interstate rate from Greenwood to destination. Apellant Chassaniol made the contention that all the cotton so purchased and sold is in interstate commerce from the moment it leaves the gin for Greenwood or at least from the moment it is purchased at Greenwood by the buyer. His contention was exactly the same contention which appellants make in this case, namely, that the tobacco is destined for ultimate shipment to some other state or country. He accordingly contended that to tax the occupation of the cotton buyer burdens interstate commerce. The judgment of the Supreme Court of Mississippi was affirmed.

Answering the contention of appellant, Mr. Justice Brandeis, at page 587 of 291 U. S., 542 of 54 S. Ct., says:

> "Ginning cotton, transporting it to Greenwood, and warehousing, buying and compressing it there are each, like the growing of it, steps in preparation of the sale and shipment in interstate or foreign commerce. But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce."

From this opinion it is to be noted that the interstate transac-

tion begins with "*the sale and shipment*" and prior to this stage each step is a transaction in intrastate commerce.

This case clearly establishes the rule that the selling of tobacco grown by a Georgia grower within the State of Georgia on a Georgia market and the buying of such tobacco by a purchaser or manufacturer is not an interstate transaction even though it may appear that the purchaser expects eventually to transport the tobacco purchased to some other state for manufacture. In this case, however, the Court will not have to go so far as the Court went in the *Chassaniol case* for the reason that the warehouseman is not the purchaser of the tobacco. He does not handle with a view of transporting to any other state and in fact has nothing to do ultimately with placing the commodity in the channel of interstate commerce.

On this particular point, attention of the court is also called to the case of *Oliver Iron Company v. Lord*, 262 U. S. 172 (1923). The purpose of the plaintiff in the Oliver Iron Company case was to restrain and prevent the enforcement of a taxing act adopted by the state of Minnesota which applied to the production of ore. The chief contention, as stated by the Court at page 177 of 262 U. S., is that mining as conducted by the plaintiffs, if not actually a part of interstate commerce, is so closely connected therewith that to tax it is to burden or interfere with such commerce. A statement of the facts discloses that the demand or market within the state for iron ore covers only a negligible percentage of what is mined by the plaintiffs. Practically all of their output was mined to fill existing contracts with consumers outside the state and the ore so mined passed at once into the channels of interstate commerce. Three-fourths of the ore came from open pit mines and one-fourth from underground mines. At the open pit mines empty cars are run from adjacent railroad yards into the mines and there loaded. Steam shovels sever the ore from its natural bed and

lift it directly into the cars. When loaded the cars are promptly returned to the railroad yards, where they are put into trains which start the ore on its interstate journey. The several steps follow in such succession that there is practical continuity of movement from the time the ore is severed from its natural bed. The operations within the mine and the movement of the cars into and out of the mine are conducted by the plaintiffs. The subsequent transportation is by public carriers. At the underground mines the plaintiffs dig the ore, bring it to the surface through shafts and put it in elevated pockets where it readily can be loaded into cars. With the underground mines the continuity of movement is not quite so close. There is some delay in loading on the cars but the subsequent movements are the same as from the open pit mines.

After stating the facts substantially as above, the Court at page 178 of 262 U. S., through Mr. Justice Van Devanter, says:

> "Plainly the facts do not support the contention. Mining is not interstate commerce, but, like manufacturing, is a local business subject to local regulation and taxation. *Kidd v. Pearson*, 128 U. S. 1, 20; *Capital City Dairy Co. v. Ohio*, 183 U. S. 238, 245; *Delaware, Lackawanna & Western R. R. Co. v. Yurkonic*, 238 U. S. 439, 444; *Hammer v. Dagenhart*, 247 U. S. 251, 272; *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 410. Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractural engagements, and persists even though the business be conducted in close connection with interstate commerce."

In the case here for consideration, the Court will have observed, no doubt, that in the process of marketing the tobacco through the warehouses, three separate and distinct legal relations are established.

First, there is the relation between the grower and the ware-

houseman. In the ordinary and usual course of the business, the grower presents the tobacco grown and cured by him at the warehouse of the warehouseman. For a consideration, the latter weighs the several parcels presented, places identifying cards thereon, furnishes floor space in his warehouse for the display of the tobacco and then at the proper time, through his auctioneer and others, notes the offers made by the respective buyers and records the highest bid and name of bidder on the identifying card. This concludes the engagement between the grower and the warehouseman and obviously it is entirely separate and distinct from any other relation which may be established in the process of marketing the tobacco. The service performed by the warehouseman even stops short of the consummated sale for the grower can accept the highest bid submitted by the buyers or not at his option. His right of dominion and right of possession persists after the engagement of the warehouseman is concluded.

Second, there is a relation established between the grower and buyer. After the tobacco is weighed, displayed on the floor of the warehouse and offered for sale, if the grower elects to accept the offer made, there arises between the grower and buyer the relation of vendor and vendee. In this relation the warehouseman is not concerned and has no interest.

Third, there is a relation established between the buyer and warehouseman. If the grower accepts the price offered, then the buyer within a short time removes the tobacco from the floor of the warehouse and the warehouseman for the buyer under some arrangement or agreement between himself and the buyer makes payment to the grower in the amount of the purchase price of the tobacco purchased by the buyer from the grower, but before doing so he deducts the amount of his commission and charges.

The challenged statutes relates to and actually affects only the relation between the grower and the warehouseman. It does not purport by its terms to affect any other relation and in fact does not do so. It provides that the maximum charge of the warehouseman for the service rendered by him shall not exceed the amount set out in the act, to wit, a stipulated maximum amount for weighing and handling, a stipulated maximum charge for auction fee and a stipulated maximum charge as commission on the gross sale which the warehouseman may exact for the service aforesaid rendered by him.

The only remaining provision touching the relation of the warehouseman and the grower is the provision that the warehouseman render to each seller of tobacco a bill plainly stating the amount charged for weighing and handling, the amounts charged for auctioning fees and the amounts charged for commissions on each sale. As to this last requirement, no complaint is made in the bill and the propriety and fairness of the regulation is in no way challenged by appellants.

We wish to emphasize that the act purports to deal only with the relation between the grower and the warehouseman and an examination of the functions, or elements entering into the relation between them separately, will, we believe, demonstrate beyond question that the transaction is entirely local in its nature, subject to regulation by the General Assembly of the State of Georgia under its police power and not subject to regulation by Congress under the commerce clause of the Federal Constitution even if Congress should undertake so to do.

Let us examine first the weighing service and charge separately. This is a service rendered by the warehouseman to the grower for a compensation. But suppose the warehouseman should say to the grower: "This weighing service is unprofitable to us and we do not care to render it. The laws of the State

provide for public weighers of cotton and other farm produce. Take your tobacco to the scales of a public weigher of cotton and let him weigh each parcel, certify the correct weight, place an identifying card on each parcel with the weight thereof and then bring your tobacco to my warehouse and place it on the floor. I will accept the certified weight of the public weigher and allow the tobacco to be sold on the floor of my warehouse." In the case supposed the public weigher would perform exactly the same service as the warehouseman performs in weighing the tobacco, yet who would contend that the service performed by the public weigher is not entirely local in its nature and subject to any reasonable regulation the General Assembly might see fit to impose affecting the relation between himself and the grower. Further, suppose that the warehouseman did not care to perform the service now performed by his auctioneer and the grower were permitted to employ a public auctioneer—one not employed by the warehouseman, to cooperate with the bidder, with a view of noting and declaring the highest bid offered. In such case the service rendered by the public auctioneer would be exactly the same as that rendered by the warehouseman through his auctioneer and in substance and legal effect the two transactions would be the same, yet who would contend that the relation between the local public auctioneer and the local grower is such an intimate and integral part of interstate commerce that the General Assembly is without power to enact a reasonable law affecting or regulating that relation? In other words, why must a service rendered by the warehouseman through his employee in his warehouse and on his scales be held to be an interstate transaction when the same service rendered by a local public weigher and a local public auctioneer is so plainly an intrastate transaction?

> "Interstate commerce is a practical conception and what falls within it must be determined upon a consideration of established facts and known commercial methods."

Public Utilities Commission v. Landon, 249 U. S. 236, 245 (1919).

The act here involved, as already pointed out, purports to deal only with the relation between the grower and warehouseman and under the "established facts and known commercial methods", that relation does not fall within interstate commerce. The contention of appellants to the contrary is not supported either by reason or authority. In addition to the particular cases hereinbefore cited other cases in point are: *Browning v. Waycross*, 233 U. S. 16, 22 (1914); *Merchants Exchange v. Missouri*, 248 U. S. 365 (1919); *Heisler v. Thomas Colliery Co.*, 260 U. S. 245 (1922); *Champlain Refining Co. v. Corporation Commission*, 286 U. S. 210, 235 (1932); *Nashville, etc., Ry. Co. v. Wallace*, 288 U. S. 249, 265, 266 (1933); *Edelman v. Boering Air Transport Co., Inc.*, 289 U. S. 245 (1933); *Henneford v. Silas Mason Co., Inc.*, ... U. S. ....., No. 418 October, 1936, Term.

Furthermore, the percentage of tobacco purchased by the tobacco buyers with the intention of immediate shipment is not shown in the record. On the contrary some of the largest buyers on the Georgia market do not buy with the intention of immediately shipping the tobacco purchased out of the State. But such tobacco is first shipped by them to redrying plants located in the State of Georgia, one at Douglas, one at Valdosta, and one at Tifton. While the record, as stated, does not disclose the proportionate part of the tobacco sold on the Georgia market that takes this course, yet it must be admitted to be substantial. When this tobacco leaves the several market points in Georgia it is not intended that it shall be transported out of the state until it has been subjected to a process that materially changes its character, utility and value. The particular tobacco so handled and processed certainly does not reach the channel of interstate commerce until it starts on the journey

out of the State of Georgia either to a foreign country or some other state and therefore the point at which this tobacco reaches interstate commerce is still further removed from the transaction between the grower and the warehouseman than is the case with the tobacco purchased by other companies and immediately shipped out of the State. See *Arkadelphia Milling Company v. St. Louis S. W. R. Co.*, 249 U. S. 134, 151, 63 L. ed. 517, 527 (1919); *Bacon v. Illinois*, 227 U. S. 504 (1913); *General Oil Company v. Crain*, 209 U. S. 211 (1908).

2. THE ACT DOES NOT UNCONSTITUTIONALLY BURDEN INTERSTATE COMMERCE EVEN IF THE TRANSACTION BETWEEN THE GROWER AND WAREHOUSEMAN REGULATED, FALLS WITHIN THE CONCEPT OF INTERSTATE COMMERCE.

In the second place, we respectfully contend that the challenged statute does not, either as to form or operative effect, unconstitutionally burden interstate commerce, even if it be held that the transactions between the grower and warehouseman regulated thereby fall within the concept of interstate commerce.

It must be conceded that Congress has not undertaken to deal with the subject matter to which the Georgia statute relates. Further it must be conceded that the business regulated is local and not national in scope or character. See *Brown v. Houston*, 114 U. S. 622, 630 (1885); *Public Utilities Commission v. Landon*, 249 U. S. 236, 245 (1919).

In such circumstances what must appear in order to justify the Court in declaring a state statute invalid as in contravention of the commerce clause of the Federal Constitution? It is not sufficient to show merely that the transaction involved is one in interstate commerce. On the contrary, and conceding for

the sake of argument, that the transaction involved is one in interstate commerce, the question still remains as to whether the challenged statute unconstitutionally burdens or interferes with such commerce? In other words, is the burden on, or interference with interstate commerce, if any, direct and substantial or is it indirect and incidental only? The statute can be declared unconstitutional as in contravention of the commerce clause of the Federal Constitution only when it is made to appear that the burden on or interference with interstate commerce is direct and substantial. If the burden or interference is only indirect, incidental, accidental, inconsequential and remote and arises incidentally and outside the scope and purpose of the Act, the challenged statute may be enforced as a proper exercise of the State's police power.

In this case the allegations of the bill with respect to the infringement of the commerce clause of the Federal Constitution are very general. (See Second Amendment, R. 53). The warehouseman is not the shipper of the tobacco which is sold at his house, and he does not at any time during the transaction intend or expect to put the commodity in the channels of interstate commerce. He does not expect to use it or to manufacture or process it or transport it. Therefore, it is indeed difficult to see how interstate commerce may be burdened or interfered with or how the movement of the tobacco in interstate commerce is impeded, or retarded by reason of the regulation of the price which the warehouseman may charge for the service rendered by him.

If authority on this point be needed we desire to call the Court's attention to *Hopkins v. United States*, 171 U. S. 578 (1898). This case was instituted by the United States Attorney for the District of Kansas, acting under the direction of the Attorney General of the United States against Hopkins and

other defendants under the provisions of the Act of 1890 entitled an "Act to protect trade and commerce against unlawful restraints and monopolies." The purpose of the action was to obtain the dissolution of an exchange or voluntary association of which defendants were members and known as the Kansas City Livestock Exchange. The defendants had formed the association or exchange for the purpose of selling cattle at the Kansas City stockyard. Under the custom of the trade as then conducted, growers of cattle in Nebraska, Iowa and other states would ship their cattle to Kansas City for sale. The business of the exchange was carried on and conducted at the Kansas City stockyard and the cattle so shipped in interstate commerce were sold by the members of the exchange in the Kansas City stockyard. The exchange had entered into an agreement providing for minimum charges to be made by the members of the association for services rendered and it was further provided that no member of the exchange should transact any business with any person not a member of the exchange or any person violating any rules or regulations of the exchange. It was contended in behalf of the government that the business conducted by Hopkins and other members of the exchange constituted transactions in interstate commerce and that in conducting the business as aforesaid the provisions of the act of 1890 aforesaid were violated. The defendants admitted the formation of the exchange and their membership therein and admitted that the regulations referred to by the government in its suit were in force and effect, but denied that the transactions engaged in by them were interstate commerce within the meaning of the Constitution or laws of the United States.

The Court speaking through Mr. Justice Peckham, at page 587 of 171 U. S., states the legal question involved as follows:

> "We come, therefore, to the inquiry as to the nature of the business or occupation that the defendants are en-

gaged in. Is it interstate commerce in the sense of that word as it has been used and understood in the decisions of this court? Or is it a business which is an aid or facility to commerce, and which, if it affect interstate commerce at all, does so only in an indirect and incidental manner?"

At page 594 of 171 U. S. the Court further says:

"An agreement may in a variety of ways affect interstate commerce, just as state legislation may, and yet, like it, be entirely valid, because the interference produced by the agreement or by the legislation is not direct."

At page 597 of 171 U. S. the Court further says:

"Definitions as to what constitutes interstate commerce are not easily given so that they shall clearly define the full meaning of the term. We know from the cases decided in this court that it is a term of very large significance. It comprehends, as it is said, intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale, and exchange of commodities between the citizens of different states, and the power to regulate it embraces all the instruments by which such commerce may be conducted. (Citing authorities.)

"But in all the cases which have come to this court there is not one which has denied the distinction between a regulation which directly affects and embarrasses interstate trade or commerce, and one which is nothing more than a charge for a local facility provided for the transaction of such commerce. On the contrary, the cases already cited show the existence of the distinction and the validity of a charge for the use of the facility."

In short, the Court holds that the service rendered by the commission merchant, if affecting interstate commerce at all,

did so only indirectly and incidentally and that the act complained of did not constitute a violation of the act of 1890.

The tobacco warehousemen are not themselves the sellers or the buyers of the tobacco with intent to transport it into some other state or foreign country or to use it in any place. They occupy positions analogous to the brokers and commission merchants referred to in *Hopkins v. United States, supra.* In fact the services of the tobacco warehousemen are further removed and have less relation to interstate commerce than did the service of the commission merchants in Hopkins v. United States, for in the Hopkins case the cattle dealt with were unquestionably the subjects of interstate commerce. But the tobacco dealt with by the warehousemen does not become a subject of interstate commerce until after the transaction between the grower and warehouseman are completed.

While the facts set forth and under consideration in *Hopkins v. United States, supra,* have been distinguished from facts involved in other cases reaching and decided by the Court, at the same time the principle announced in the Hopkins case has never been criticized or overruled. In effect its soundness was recognized in the case of *Swift & Company v. United States,* 196 U. S. 375, 49 L. ed. 918, where the court said:

> "So again the line is distinct between this case and Hopkins v. United States, 171 U. S. 578, 43 L. ed. 290. All that was decided there was that the local business of commission merchants was not commerce among the states, even if what the brokers were employed to sell was an object of such commerce. The brokers were not like the defendants before us, themselves the buyers and sellers."

In the very recent case of *Hartford Accident & Indemnity Company v. Illinois,* 298 U. S. 155, 80 L. ed. 1099, the Court considered the validity of an Illinois statute forbidding anyone

to receive, sell, offer or solicit consignments of farm produce to sell on commission within Illinois unless licensed, and requiring every applicant for license to make a showing as to character, respectability and good faith in the conduct of the proposed business and further requiring that a bond be posted in the sum of $5,000 with satisfactory surety conditioned on honest accounting and handling of produce received and against fraudulent conduct. The Cross Company took out the license and posted the bond required under the law signed by Hartford Accident & Indemnity Company as surety. The principal failed and the insurance company pleaded that the statute was beyond the state's power because a restriction upon and a regulation of interstate commerce. Speaking for the court Mr. Justice Roberts, among other things, said:

> "The sole question presented is the constitutional validity of the act as it affects the appellant's liability under its bond. The statute is a police regulation. The business regulated is local, having its situs within the state and being conducted therein. The fact that the commission merchant contracts to sell and sells farm produce forwarded to him from points without, as well as points within, the state is not enough to condemn the regulation of a business carried on within her borders. Such effect as the regulation has upon interstate commerce is indirect and incidental and does not trespass upon the power conferred on Congress by Article 1, Section 8 of the Federal Constitution. In these circumstances, until Congress, under the commerce power, adopts inconsistent legislation, that of the state remains effective."

With reference to the Illinois statute under consideration by the Court in *Hartford Accident & Indemnity Company case, supra*, it is to be noted that Congress had adopted similar but not inconsistent legislation. Here it is not contended that Congress has adopted any legislation to protect the tobacco

growers from unreasonable charges by the combination of tobacco warehousemen, although it is admitted that all tobacco growing states have passed regulatory statutes similar to the Georgia statute.

The importance of the distinction between direct and indirect effects on interstate commerce was pointed out by the Court in *Schechter v. United States*, 295 U.S. 496, 79 L. ed. 1570 (1935). In this case Mr. Chief Justice Hughes, speaking for the court, beginning at page 546 of 295 U. S., said:

> "In determining how far the federal government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects . . . Direct effects are illustrated by the railroad cases we have cited, as, e. g., the effect of failure to use prescribed safety appliances on railroads which are the highways of both interstate and intrastate commerce, injury to an employee engaged in interstate transportation by the negligence of an employee engaged in an intrastate movement, the fixing of rates for intrastate transportation which unjustly discriminates against interstate commerce. But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Indeed, on such a theory, even the development of the state's commercial facilities would be subject to federal control."

Since we are now dealing with the question of interference with or burden on interstate commerce let us examine the challenged act to determine just what are its effects.

The direct effect of the act is, of course, to limit the charges of the several warehousemen for services rendered the grower. It may be that the aggregate earnings of the several warehousemen will be diminished. But what and whom will that condition affect and how will the effect be brought about? By reason of the reduced earnings or revenues, if such be the case, the purchasing power of appellants may be reduced. They might be required to purchase fewer and cheaper clothes and they might be required to economize in the operation of their businesses respectively and to that end engage fewer employees and by reason of that fact commerce generally, and possibly interstate commerce incidentally, would lose the stimulating effect that more spending by the warehousemen would cause. But certainly no one would contend that such effect is direct and substantial rather than indirect, incidental and remote.

The only remaining contention that the warehousemen might make on this point is that possibly under conditions of short crops and low prices, with the reduced earnings, they might not be able to maintain a high standard of efficiency in rendering the service which they purport to render and that thereby the tobacco industry might be adversely affected and the quantity actually sold and transported to other states affected and that those who buy and ship in interstate commerce might be deprived of such high standard of efficiency. But certainly the extent of the influence and effect of the act along these lines, if any, has not been shown. In fact, it cannot be shown and must necessarily be a matter of conjecture and speculation. Many times the Court has dealt with such arguments and has uniformly set them aside as furnishing no evidence of direct or substantial interference with, or burden on, interstate commerce. *United Leather Workers International Union v. Herkert*, 265 U. S. 457; *Industrial Association v. United States*, 268 U. S. 64.

In support of the legal contention which we make in this division of appellees' brief we cite additional authorities, to wit: *Munn v. Illinois*, 94 U. S. 113, 123, 135, 24 L. ed. 77, 83, 87 (1877); *Transportation Company v. Parkersburg*, 107 U. S. 691, 27 L. ed. 548 (1883); *Hennington v. Georgia*, 163 U. S. 299, 41 L. ed. 166 (1896); *Lakeshore & N. S. R.R. Co. v. Ohio*, 173 U. S. 285, (1899); *Cargill Company v. Minnesota*, 180 U. S. 452, 45 L. ed. 619 (1901); *Missouri Pacific Railway v. Larabie Mills*, 211 U. S. 612, 621, 53 L. ed. 352 (1909); *Merchants Exchange v. Missouri*, 248 U. S. 365, 63 L. ed 300 (1919); *Atlantic Coast Line R. Co. v. Standard Oil Company*, 275 U. S. 258, 72 L. ed. 270 (1927); *Federal Compress Company v. McLean*, 291 U. S. 17, 78 L. ed. 622 (1934); *Chassanaiol v. Greenwood*, 291 U. S. 548, 78 L. ed 1104 (1934); *Clyde Mallory Lines v. Alabama*, 296 U. S. 261, 80 L. ed. 215; *Hammer v. Dagenhart*, 247 U. S. 251, 62 L. ed. 1101 (1917); *Pacific States Box & Basket Co. v. White*, 296 U. S. 176, 80 L. ed. 138.

We have heretofore stated in this division of appellees' brief that Congress has not undertaken to deal with the subject matter to which the Georgia statute relates. In this connection it is to be noted that the Tobacco Inspection Act (U.S.C.A., Title 7, Section 511) passed by Congress after the instant suit was filed, clearly does not attempt to regulate the business of tobacco warehousemen, but only provides for the grading of producer's tobacco by government inspectors. Even if this Act were a regulation of the tobacco warehouse business, which obviously it is not, the Georgia statute would remain effective and valid since there is no conflict between the two statutes and the Federal act affords the grower no protection whatever against unreasonable charges by the warehouseman.

> "Congressional regulation of a business does not nullify state regulation of the same business, if the Federal act

does not cover the same field, or is consistent with the state legislation."

Hartford Accident & Indemnity Company v. Illinois, 298 U. S. 155, 80 L. ed. 1099.

3. CASES CITED BY APPELLANTS, DISCUSSED AND DISTINGUISHED.

In the conclusions of law filed by the majority of the statutory court in this case (Paragraph 4, R. 87) is set forth the contention of appellants with respect to the alleged invalidity of the act, as imposing a burden on interstate commerce. In this connection the Court said:

> "As we understand the contention of complainants it is, that because the acts of the warehousemen constitute one step in getting the tobacco to the manufacturer and such manufacturers all, or practically all, reside out of this state and it was known at the time the services were rendered by the warehousemen that the ultimate destination of the tobacco would be out of this state, that such services constituted a part of interstate commerce. We cannot agree with this contention. If sound, logically it would lead us to the conclusion that the very planting and harvesting of tobacco were parts of interstate commerce, for the reason that each of such acts was with the knowledge that all or practically all of the tobacco would ultimately move out of this State."

It is to be noted also that the minority of the statutory court reached the conclusion that the challenged act does not interfere with or burden interstate commerce.

The cases cited by appellants are easily distinguished in that the facts involved in such cases are entirely different from the facts involved in the instant case. They do not support appellants' contention. The cases in question will be briefly noted.

(a) *Covington & Cincinnati Bridge Company v. Kentucky*, 154 U. S. 204.

The *Covington Bridge Company case* involved the validity of an act of the legislature of Kentucky which made it unlawful for any person or corporation to charge, collect, or demand for a passage over the bridge spanning the Ohio River and connecting the State of Kentucky and the State of Ohio in excess of a certain amount named in the act. From the decision it appears that the bridge in question was constructed by and under cooperative acts passed by the legislature of the State of Kentucky on the one hand and the State of Ohio on the other, and confirmed by an act of Congress. The Kentucky law purporting to limit the charge which might be collected for passage over the bridge was attacked on the ground that it operated as an interference with interstate commerce and on the further ground that it impaired the obligation of a contract as contained in the original charter of the bridge company approved by both states. The act undertook to fix the price of tolls for merchandise and persons passing over this bridge from the State of Kentucky to the State of Ohio.

It is pointed out in the decision that the adjudications of the Court with respect to the power of the states over the general subject of commerce are divisible into three classes. First, those in which the power of the state is exclusive; second, those in which the states may act in the absence of legislation by Congress; and third, those in which the action of Congress is exclusive and the states cannot interfere at all.

It was pointed out in the discussion that Congress has no power to interfere with police regulations relating exclusively to the internal trade of the state. The distinguishing features between the Kentucky Bridge case and this case are readily apparent. The Kentucky statute by its regulatory terms undertook to strike

at the very center of a current or flow of commerce passing from one state to another. The act imposes its regulation into the very current of interstate commerce after it is in motion and at a point where it is passing from one state to the other. We have no such analogous condition in this case. The force and effect of the regulatory statute here involved accomplishes its design and spends its force before the tobacco reaches the channel of interstate commerce. The challenged provisions of the statute are completely exercised before even a consummated sale is made.

(b) *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282.

In the *Bondurant case* was involved an action to recover damages for a breach of a contract for the sale and delivery of a crop of wheat. The plaintiff Dahnke-Walker Company was a Tennessee corporation engaged in operating a flour and feed mill at Union City, Tennessee. The defendant was a resident of Hickman, Kentucky, and had entered into a contract to sell to the plaintiff his crop of wheat at a stipulated price. The contract was made in Kentucky and the wheat was to be delivered and paid for there, but under the terms of the contract and the custom and practice theretofore observed over a period of years the delivery was to be on board the cars of a common carrier and the plaintiff intended to ship the wheat to its mill in Tennessee. Bondurant refused to comply with his contract and the suit was brought by the milling company against him for damages for a breach thereof. The defense interposed was that the plaintiff had not complied with the statute of Kentucky prescribing the conditions on which corporations of other states might do business in that state and for this reason it was contended that the contract was not enforcible. The plaintiff contended that the only business done in Kentucky consisted of

purchasing wheat and other grain in that state for immediate shipment to its Tennessée mill and then shipping the same there and that the contract in question was made in the course of this business and with the purpose of forwarding the wheat to the mill as soon as it was delivered on board the cars and that the transaction was in interstate commerce and that the statute of Kentucky invoked was invalid because in conflict with the commerce clause of the Federal Constitution.

At page 292 of 257 U. S., the court speaking through Mr. Justice Van Devanter, clearly points out the elements or features of this transaction which bring it within the concept of interstate commerce. He said:

> "It had been the practice of plaintiff to go into Kentucky to purchase grain to be transported to and used in its mill in Tennessee. On different occasions it had purchased from the defendant—at one time 13,000 bushels of corn. This contract was made in continuance of that practice, the plaintiff intending to forward the grain to its mill as soon as the delivery was made. In keeping with that purpose the delivery was to be on board the cars of a public carrier. Applying to these facts the principles before stated, we think the transaction was in interstate commerce. The state court, stressing the fact that the contract was made in Kentucky and was to be performed there, put aside the further fact that the delivery was to be on board the cars and that the plaintiff, in continuance of its prior practice, was purchasing the grain for shipment to its mill in Tennessee. *We think the facts so neglected had a mtaerial bearing and should have been considered. They showed that what otherwise seemed an intrastate transaction was a part of interstate commerce.*" (Italics ours.)

From this statement it is clear that the Court considered the determining factor to be the fact that the grain in question, pursuant to and in continuance of a prior practice, was to be delivered on board the cars of a common carrier for shipment

to a mill in Tennessee. In the absence of this element, the Court further makes it clear, that the transaction would have been one falling within intrastate commerce.

(c) *Lemke v. The Farmers Grain Company*, 258 U. S. 50.

In the *Lemke case the* complainant was an owner of an elevator and a purchaser of grain bought in North Dakota to be shipped to and sold at Terminal markets in other states. The North Dakota act under attack in that case presented a comprehensive scheme to regulate the buying of grain. It was provided that purchases could be made by only those who hold licenses from the state, pay state charges for the same and act under a system of grading, inspecting and weighing as defined in the act. It was further provided that the grain in question could only be purchased subject to the power of the State Grain Inspector to determine the margin of profit which the buyer might realize on his purchase. The statute as is clearly disclosed in the decision was designed to relate to and regulate the business of those purchasers of grain in that state who bought with the intention of shipping to other states and the statute there involved even went so far as to limit and prescribe the amount of profit that the purchaser might make. Certainly, we can find no parallel elements in the statute here challenged. If the Georgia legislature should enact a law which purports to relate to those persons who purchase and ship tobacco to other states placing burdensome regulations upon the operation of their business and prescribing the profit that they might make, the *Lemke case* would be in point, but such is not the purpose or operative effect of the challenged statute. It does not purport to affect the business or operation of the purchaser or shipper of tobacco.

(d) *Shafer, etc. v. Farmers Grain Company, et al.*, 268 U. S. 189.

In *Shafer v. Farmers Grain Company, supra,* there was involved the question of the validity of the North Dakota grain grading act. The plaintiffs were owners and operators of country elevators within that state at which they bought wheat from farmers for shipment to markets in other states. The grain grading act under attack in that case had the same general purpose as the act involved in *Lemke v. Farmers Grain Company,* 258 U. S. 50. The act involved in the *Shafer case* purported to deal with and establish regulations affecting directly those plaintiffs owning and operating country elevators at which they bought wheat for shipment to markets in other states. The decision sets out rather completely the terms of the act. There is also disclosed in the opinion of the court the nature of the business affected and at page 200 of 268 U. S. appears a clear statement with reference to the general provisions of the act and its operative effect. The Court said:

> "Only by disregarding the nature of this business and neglecting important features of the act can it be said to affect interstate commerce only incidentally and remotely. That it is designed to reach and cover buying for interstate shipment is not only plain but conceded. To conform to recognized commercial practices such buying must be by grade, and it is so conceded. The Act prevents buying by grade, unless the buyer secures from the State a grading license for himself or his agent. The general practice is to buy and ship without separating the dockage from the wheat, the price paid carrying a right to both. The Act requires the buyer to separate the dockage and return it to the producer, unless it be distinctly valued and paid for. A failure to comply with this or any other requirement of the Act is made cause for revoking the grading license. It is practically essential that the buyers have and operate elevators as facilities for handling and loading the wheat. The act requires every such buyer to give to the State, if he buys on credit, a bond securing payment for all wheat so purchased; to keep a record of all wheat bought, show-

ing the grade given and price paid at his elevator and the grade fixed and price received at the terminal market; and to furnish such data to the State Supervisor when requested. The Act also intends and declares that the State Supervisor 'shall in a general way investigate and supervise the marketing' of the grain with a view of 'preventing' various things deemed unjust or fradulent, including 'unreasonable margins of profit' and 'confiscation of valuable dockage'; and, to the end that this and other provisions may be made effective, the Act invests him with authority to make and enforce such orders, rules and regulations as may be necessary to carry out all of its provisions."

The difference between the purpose and scope of the North Dakota grain grading act under review in the *Shafer case* and the Georgia statute under attack in this case appears at a glance. The North Dakota statute directly related to the purchaser of wheat for shipment to other states and imposed upon him regulations, burdensome in their nature. Like the act under review in the *Lemke case*, the State Supervisor was given broad power to supervise the marketing of grain and to prevent unreasonable margins of profit. We are sure it need not be repeated here that the Georgia act does not purport to deal with the purchaser of tobacco and imposes no restriction or regulation on either his buying, use or transportation of the commodity purchased.

In the *Shafer case* the Court states and recognizes as sound the rule that a state statute enacted for admissable state purposes and which affects interestate commerce only incidentally and remotely is not a prohibited state regulation in the sense of that clause (page 199, 268 U. S.).

The court also, through Mr. Justice Van Devanter, points out the elements in *Munn v. Illinois*, 94 U. S. 113, and *Cargill Company v. Minnesota*, 180 U. S. 452, and *Merchants Exchange*

v. Missouri, 248 U. S. 365, which distinguish them from the *Shafer case*. In connection with this matter he said:

> "In *Munn v. Illinois*, 94 U. S. 113, 123, 135, the question was whether, as respects an elevator devoted to storing grain for hire, the state could regulate the storage charge where part of the grain reached the elevator or was destined to reach it, through the channels of interstate commerce. The court held such regulation admissible because of the public character of the elevator and because interstate commerce was affected only *incidentally and remotely* (Italics ours). No restriction on buying or shipping was involved. In *Cargill Company v. Minnesota*, 180 U. S. 452, the court had before it a state statute, much of which had been pronounced unconstitutional by the state court. In sustaining a provision which remained, the court said, p. 470: 'The statute puts no obstacle in the way of the purchase by the defendant company of grain in the state or the shipment out of the state of such grain as it purchased.' Plainly, the case is not in point here. In *Merchants Exchange v. Missouri*, 248 U. S. 365, the statute involved required that public weighers appointed for the purpose should do the weighing and issue weight certificates at elevators used for storing or transferring grain for hire, and prohibited any other person from issuing weight certificates at an elevator where a public weigher was stationed. Objection was made to the prohibition on the ground that as applied to grain received from or shipped to points without the State it burdened interstate commerce. Of course the objection was overruled, the statute being an admissible regulation of the business of conducting an elevator for hire, like the statute considered in *Munn v. Illinois*."

In the foregoing statement the Court in its interpretation of *Munn v. Illinois*, *Cargill Company v. Minnesota*, and *Merchants Exchange v. Missouri*, points out the rule which controls this case. Briefly stated, it is that the act here challenged places no restriction on buying or shipping and if, in fact, interstate com-

merce is affected at all, it is so affected only incidentally and remotely and not in such way or degree as contravenes the commerce clause of the Federal Constitution.

See also *United Leather Workers v. Herkert*, 265 U. S. 458, where the Court discusses both the *Bondurant case* and the *Lemke case* and points out the particular elements in the transaction therein involved which bring the facts of those cases within interstate commerce.

(e) *Oklahoma v. Kansas Natural Gas Company*, 211 U. S. 229.

The Court construed the Oklahoma act involved in this case as one having the obvious purpose and effect of preventing the transportation of natural gas, held by the court to be a commodity of intrastate and interstate commerce, from the State of Oklahoma to adjoining states, thus setting up a complete economic barrier between the states in the sale and distribution of natural gas in interstate commerce. Certainly, there is no such element to be found in Georgia statute. We have already pointed out the fact that the statute involved in the instant case places no restriction or limitation whatsoever on the purchase of tobacco or the transportation thereof from Georgia to any other state or foreign country. Neither in purpose nor effect does the Georgia statute create an economic barrier between the states or any condition of isolation of the State of Georgia.

(f) *Pennsylvania v. West Virginia*, 262 U. S. 553.

There was involved in this case the validity of a West Virginia statute, the obvious purpose and effect of which, as the Court held and pointed out, was to give preferential distribution of natural gas, a commodity of commerce, to the citizens of West Virginia, to the prejudice of the states of Pennsylvania and Ohio,

where an interstate business in such gas had been established, partly at the instance of the State of West Virginia. The act differs, not in character but only in degree, from the Oklahoma act involved in *Oklahoma v. Kansas Natural Gas case, supra.* The Georgia statute here under attack is so different in purpose, scope and effect that argument is not needed to demonstrate that the case cited does not control or support appellants' contention.

(g) *Binderup v. Pathe Exchange*, 263 U. S. 291.

The transaction under review in this case was held to be in interstate commerce. The elements of the transaction, however, as stated by the court were as follows:

> "The film contracts were between residents of different states and contemplated the leasing by one to the other of a commodity manufactured in one state and transported and to be transported to and used in another. . . . It consisted of manufacturing the commodity in one state, finding customers for it in other states, making contracts of lease with them, and transporting the commodity leased from the state of manufacture to the states of the lessee."

If the Georgia statute purported to affect, or as a matter of fact did affect, the purchaser of the tobacco who resides in another state and buys from persons in this state and transports the commodity so purchased to another state for manufacture and use therein, the cited case would be in point. But such is not the case. It is a far cry from the transaction under review in the Binderup case to the transactions which the Georgia statute affects, to wit, solely the transaction between the grower and the warehouseman. In the ordinary course of the business the warehouseman is not the purchaser of the tobacco, does not expect to transport it to another state, and is not interested in or concerned with the transportation of the product in question. How

then can the Binderup case support the contention that the Georgia statute burdens or interferes with interstate commerce?

(h) *Swift & Company v. United States*, 196 U. S. 375.

This suit was by the United States under the provisions of the Anti-Trust Act against a number of firms and individuals of different states and the bill charged a "combination of a dominant portion of dealers in fresh meat throughout the United States not to bid against each other in the livestock markets of the different states." The court construed the bill as charging "successive elements of a single connected scheme," the purport and design of which was to control and monopolize commerce in livestocks and meats in the United States. All defendants, whether operating wholly within a single state or not, were charged to be parties to such conspiracy and combination. The petition presented a situation of cattle being shipped from the far West to the stockyards at Kansas City, Omaha and other cities in the middle West and there sold for shipment to other states for feeding purposes or for slaughter and shipment of the meats therefrom to the Eastern states and foreign countries, for sale and distribution, and the purport of the bill was that defendants were endeavoring by combination and agreement to dominate, control and monopolize the movement of the livestock and meats from beginning to end. In this case the court for the first time developed and applied the concept of a "stream", "current" or "flow" of commerce and it was held to be immaterial that a "combination of this nature embraces restraint and monopoly of trade within a single state if it also embraces and is directed against commerce among the states." Under the conditions named it was held that "the effect of such a combination upon interstate commerce is direct and not accidental, secondary or remote." Surely there can be found in the Georgia statute involved in the instant case no such purpose or

design as appeared in the combination and agreement, plan or scheme of the defendants in the case cited. There must be a beginning or source before there can be a stream, current or flow of interstate commerce. We have heretofore pointed out that the Georgia statute spends its force wholly and completely on a local situation and that the force of its regulative provisions are exhausted before a consummated sale of the product. The case of *Swift & Company v. United States, supra,* cannot be controlling in this case because of the marked difference between the facts and conditions dealt with in the two cases.

(i) *Stafford v. Wallace*, 258 U. S. 495.

In this case there was involved the constitutional validity of the Packers and Stockyards Act of 1921. The scope and scheme of this act plainly was to deal with a situation developed in the case of *Swift & Company v. United States* and in effect the holding of the court was that if the courts could deal with such a situation after it had developed, Congress might interpose legislation to prevent its happening. The real purport of the decision in the Stafford case is set out by the Court itself in *United Leather Workers v. Herkert*, 265 U. S. 469, as follows:

> "The case of *Stafford v. Wallace*, 258 U. S. 495 and *Chicago Board of Trade v. Olson*, 262 U. S. 1, are also supposed in some way to sustain the view that a strike against the manufacture of commodities intended to be shipped in interstate commerce is a conspiracy against that commerce. What those cases decided was that when Congress found from investigation that more or less constant abusive practices and a course of business, usually only within state police cognizance, threatened to obstruct or unduly to burden the freedom of interstate commerce, it could by law institute supervision of such course of business in order to prevent the abuses having such effect. As said in *Stafford v. Wallace* (p. 520):

" 'The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for federal restraint.' "

It will be particularly noted that the Packers & Stockyards Act includes practices and courses of business "*usually only within state police cognizance*" and acts "*usually lawful and affecting only intrastate commerce when considered alone.*" But the court holds that these acts and practices may be subjected to control by Congress when they are more or less constant and will "probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct burden on it." Unless these conditions obtain of course Congress is without authority to interpose its regulatory power.

(j) *Tagg Brothers v. United States*, 280 U. S. 420.

This also is a case involving the Packers & Stockyards Act of 1921. In this case it was conceded that the transactions involved were in interstate commerce. The complainants conceded that they were engaged in such commerce at public stockyards and were subject to some regulation by Congress. Page 433 of 280 U. S. Their contention was that the order of the Secretary of Agriculture fixing the prices charged was invalid for the various reasons set out.

Neither the *Stafford case* nor the *Tagg Brothers case* can be considered as affecting the question involved in the instant case. Congress has not undertaken by any act of legislation to regulate or prescribe the charges to be made by tobacco warehousemen to growers for services rendered.

(k) *The Virginia Railway Company v. System Federation No. 40*, No. 324, October Term, 1936, decided March 29, 1937.

There was involved in this case an Act of Congress, the design and purpose of which is to prevent interruption of interstate commerce by strikes. Petitioner, the Railway Company, contended that certain of its employees, claiming rights under the Act, were not engaged in interstate commerce, in that the duties performed by them had no relation to interstate transportation. It was shown, however, that such employees were engaged in repair work on equipment used by the railway company in its transportation service, ninety-seven per centum of which is interstate. The Court, speaking through Mr. Justice Roberts, said:

> "Both courts below have found that interruption by strikes of the back shop employees, if more than temporary, would seriously cripple petitioner's interstate transportation. The relation of the back shop to transportation is such that a strike of petitioner's employees there, quite apart from the likelihood of its spreading to the operating department, would subject petitioner to the danger, substantial, though possibly indefinable in its extent, of interruption of the transportation service. The cause is not remote from the effect. The relation between them is not tenuous. The effect on commerce cannot be regarded as negligible."

We cannot take this case as authority for holding the Georgia Act invalid as a burden on interstate commerce. Appellants are not engaged in the transportation business. Interruption of the flow of interstate commerce, from the enforcement of the act does not appear as a reality or reasonable possibility. The ruling of the Court in this case obviously is based upon the finding that a strike on the part of the back shop employees would subject the

a danger of interruption of its service *sub-*
; that "the cause is not remote from the
ion between them is *not tenuous*" and that
; cannot be regarded *as negligible*." (Ital-

It might be conceded therefore for the sake of the argument of this point that the transactions involved in this particular case are interstate in character. At the same time it must necessarily follow that the act is not invalid or unenforceable for the reason that the effect on interstate commerce from its enforcement cannot be held to be substantial. If it affects interstate commerce at all that effect is only negligible.

II.

IN THE EXERCISE OF ITS POLICE POWER THE STATE OF GEORGIA MAY FIX MAXIMUM CHARGES FOR TOBACCO WAREHOUSES.

One of the major contentions urged by appellants is that the General Assembly of Georgia was without power to enact the challenged statute. In this connection it is contended that the statute contravenes the due process clause of the Fourteenth Amendment to the Federal Constitution.

1. THE POWER EXERCISED IS ONE PROPERLY FALLING WITHIN THE POLICE POWER AS THAT TERM HAS BEEN DEFINED AND APPLIED.

It would no doubt be without assistance to the Court for us to enter into a discussion of the nature, extent and scope of legislative power, concededly reserved to the states under the Federal Constitution and generally referred to as the police power. As helpful and comprehensive a statement perhaps as any is to be

found in the case of *Noble State Bank v. Haskell*, 219 U. S. 104, where Mr. Justice Holmes at page 111 said:

> "It may be said in a general way that the police power extends to all the great public needs. Camfield vs. United States, 167 U. S. 518. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

And with reference to the scope and extent of the police power of a state it is always to be remembered that with the widening of the scope of social control there must be and necessarily is a judicial extension of the concept of police power of the state. It is not a power that rests in the precedents of the past and the application of the principle should not and can not be denied merely because no precedent can be found for a statute precisely like the one under review.

Village of Euclid v. Amber Realty Co., 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303; *German Alliance Insurance Co. v. Lewis*, 233 U. S. 389, 408.

From the decided cases it is well settled that the legislative power of a state, speaking generally, may be exercised in all matters that pertain to the public health, public safety, public morals, general welfare, public convenience and general prosperity.

2. THE BUSINESS OF TOBACCO WAREHOUSEMEN MAY BE REGULATED EVEN TO THE EXTENT OF PRESCRIBING MAXIMUM CHARGES FOR SERVICES RENDERED BECAUSE THE BUSINESS AS CONDUCTED IS AFFECTED WITH A PUBLIC INTEREST AND FOR ADEQUATE REASONS IS SUBJECT TO LEGISLATIVE CONTROL AND REGULATION.

Appellants here contend that the Act under attack contravenes the due process clause o f the Fourteenth Amendment for the rea-

son that in operation it restricts or limits liberty or freedom of contract. In view of the nature of the business conducted it is respectfully submitted that the contention is without merit.

The quesiton presented first came before the Court in the case of *Munn v. Illinois*, 94 U. S. 113, 24 L. Ed. 77 (1877). In this case there was involved the question of the right of a state to fix by legislative enactment prices to be charged by warehousemen in the State of Illinois. The legislature of that state had enacted a law fixing the maximum charges to be made by grain warehousemen and the identical question presented in the case as stated by Mr. Chief Justice Waite at page 123 of 94 U. S. is

> "Whether the General Assembly of Illinois can, under the limitations upon the legislative power of the states imposed by the Constitution of the United States, fix by law the maximum of charges for the storage of grain in warehouses at Chicago and other places in the state having not less than 100,000 inhabitants 'in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such manner that the identity of different lots or parcels can be accurately preserved.'"

It was claimed by the warehousemen that the act in question was repugnant to the Fourteenth Amendment to the Constitution of the United States. In approaching the question the Court first discussed the force and nature of the police power reserved to the states in the formation of the Union and after pointing out the source and nature of this power it proceeded to call attention to the fact that in the exercise of police power from time immemorial it had been customary in England and in this country from its colonization, to regulate by statutory enactment ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum charge to be made for

services rendered and accommodations furnished. The Court then states the principles upon which the power of regulation referred to rests, at page 126, saying:

> "Looking, then to the common law from whence came the right which the Constitution protects, we find that when private property is 'affected with a public interest, it ceases to be juris privati only.' This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise De Portibus Maris ,and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he ,in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control." 94 U. S. 126.

The Court then states the nature of the businesses conducted by the plaintiffs. It was shown that the grain warehouses or elevators in Chicago were large structures holding from 300,000 to 1,000,000 bushels at a time and that the method of conducting the business of warehousemen had been in the process of development for approximately twenty years.

With reference to the warehouses and the nature of the business conducted the Court at page 131 said:

> "In this connection it must also be borne in mind that, although in 1874 there were in Chicago fourteen warehouses adapted to this particular business, and owned by about thirty persons, nine business firms controlled them, and that the prices charged and received for storage were such 'as have been from year to year agreed upon and estab-

lished by the different elevators or warehouses in the City of Chicago, and which rates have been annually published in one or more newspapers printed in said city, in the month of January in each year, as the established rates for the year then next ensuing such publication.' Thus it is apparent that all the elevating facilities through which these vast productions 'of seven or eight great states of the West' must pass on the way 'to four or five of the states on the seashore' may be a 'virtual' monopoly.

"Under such circumstances it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the innkeeper ,or the wharfinger, or the baker, or the cartman, or the hackney-coachman, pursues a public employment and exercises 'a sort of public office,' these plaintiffs in error do not. . . . Their business most certainly 'tends to a common charge, and is become a thing of public interest and use. . . . Certainly if any business can be clothed 'with a public interest, and cease to be juris privati only,' this has been. It may not be made so by the operation of the Constitution of Illinois or this statute, but it is by the facts." 94 U. S. 131, 132.

Following this observation, the Court calls attention to the fact that the people of Illinois in 1870 revising their constitution saw fit to make it the duty of the General Assembly to pass laws for the protection of producers, shippers and receivers of grain and produce and to require all railroad companies receiving and transporting grain in bulk or otherwise to deliver the same to any elevator to which it might be consigned, etc. From this statement the Court, at pages 132 and 133 of 94 U. S., proceeds as follows:

"This indicates very clearly that during the twenty years in which this peculiar business has been assuming its present 'immense proportions,' something had occurred which led the whole body of the people to suppose that remedies

such as are usually employed to prevent abuses by virtual monopolies might not be inappropriate here. For our purposes we must assume that, if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us the question is one of power, not of expediency. If no state of circumstances could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the state. But if it could, we must presume it did. Of the propriety of legislative interference within the scope of legislative power, the legislature is the exclusive judge."

Throughout its discussion the Court is careful to point out the fact that the principle dealt with and applied was not to be restricted by precedents of the past. In this connection the Court, at page 133 of 94 U. S., said:

"Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long known and well established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel these owners to grant the public an interest in their property, but to declare their obligations, if they use it in this particular manner."

We have quoted at length from the Court's opinion in this case because of the marked similarity between the situation and facts there dealt with and the facts presented by the record in the instant case.

Immediately following the decision of the Court in the case of *Munn v. Illinois, supra*, the cases of *Chicago B. & Q. R. Co. v. Cutts (Iowa)*, 94 U. S. 155; *Peik v. Chicago & Northwestern Ry. Co.*, 94 U. S. 164; Chicago, *Milwaukee & St. Paul R. Co. v. Ackley*, 94 U. S. 179; *Stone v. Wisconsin*, 94 U. S. 181; were all released by the Court, and following the rule established in the *Munn case*, the constitutional validity of state statutes fixing the maximum amount to be charged for the transportation of freight and passengers was upheld.

In point of time, the next case of importance decided by the Supreme Court of the United States is that of *Budd v. The State of New York* (1892), 143 U. S. 517, 36 L. ed. 247. In 1888 the Governor of the State of New York approved an act duly passed by the legislature of said state regulating the fees and charges for elevating, receiving, weighing and discharging grain by means of floating and stationary elevators and warehouses in said state. The act provided for a maximum charge for the service to be rendered according to a schedule fixed in the act. A violation of the act was made penal. Budd was indicted for a violation of the act, tried and convicted. An appeal to the state courts was denied and finally his case reached the Supreme Court of the United States, with two other cases involving the same legal question. After the historical and jurisdictional facts connected with the cases were stated by the Court, it proceeded in these words:

> "The main question involved in these cases is whether this court will adhere to its decision in *Munn v. Illinois*, 94 U. S. 113." 143 U. S., p. 528.

Thereupon, not only the *Munn case*, but other cases decided by the Court since the decision in the *Munn case* and several state cases including the Railroad Rate Cases appearing in 94 U. S.

were reviewed and carefully considered. After such review and consideration of the cases, the Court, at page 539, said:

> "It is thus apparent that this court has adhered to the decision in *Munn v. Illinois* and to the doctrine announced in the opinion of the court in that case; and those doctrines have since been repeatedly enforced in the decisions of the courts of the State."

And again, at page 544, the Court said:

> "We must regard the principle maintained in *Munn v. Illinois* as firmly established; and we think it covers the present cases, in respect to the charge for elevating, receiving, weighing and discharging the grain, as well as in respect to the charge for trimming and shoveling to the leg of the elevator when loading and trimming the cargo when loaded."

Finally the Court, at page 548, holds:

> "In the cases before us, the records do not show that the charges fixed by the statute are unreasonable or that property has been taken without due process of law, or that there has been any denial of the equal protection of the law; even if under any circumstances we could determine that the maximum rate fixed by the legislature was unreasonable."

By the decision in this case the right of a legislature to declare what is reasonable compensation for the service of a person exercising a public employment, or to fix a maximum beyond which a charge made would be held unreasonable, is clearly established.

The next case of importance is that of *Norman Brass v. Stoeser* (N. D.), (1894) 153 U. S. 391, 38 L. Ed. 757.

This case involved a statute of the State of North Dakota ap-

proved March 7, 1891, regulating grain warehouses and the weighing and handling of grain in such houses in that state. By the terms of the act the maximum amount which a warehouseman might charge for services rendered by him in the storing, weighing and handling of grain was fixed according to a schedule therein set out. It was contended that the act was repugnant to the Fourteenth Amendment to the Constitution of the United States in that, as it was contended, the effect of the act was to deprive the warehousemen of their property without due process of law and denied to them the equal protection of the law. In this case the warehousemen undertook to distinguish their case from the cases of Munn v. Illinois and Budd v. New York, supra, it being contended that a distinction should be made by the Court on the ground that, whereas the statute of Illinois as construed in the Munn case and the statute of the State of New York, as construed in the Budd case were designed to apply to thickly or densely populated centers, the North Dakota act applied to the state as a whole and that that state was sparsely settled and comprised a large agricultural district. The plaintiff also undertook to distinguish his case from the other cases on the ground that his warehouse was designed primarily to accommodate his own individual business and that his service to the public was incidental. The Court, however, would allow no such distinctions.

Concluding its opinion, the Court, through Mr. Justice Shiras, said:

> "The allegations and arguments of the plaintiff in error have failed to satisfy us that any solid distinction can be found between the cases in which these questions have been heretofore determined by this court and the present one." 153 U. S. 406.

The next important case decided by the Court is *German Alliance Insurance Company v. Lewis* (*Kan.*), 233 U. S. 389 (1914).

In 1909 the legislature of the State of Kansas passed an act regulating the fire insurance business and providing for the control of rates of premiums thereon. The German Alliance Insurance Company brought suit attacking the constitutional validity of this act on the ground that it was repugnant to the Fourteenth Amendment of the Constitution of the United States.

The insurance company thought that it presented a ground of substantial difference between the facts of its case and those dealt with in the cases of *Munn v. Illinois, Budd v. New York* and *Brass v. North Dakota, supra.* It contended that the classes of businesses dealt with in those cases were entirely different in their nature from the business of writing fire insurance. It was asserted that the business of fire insurance is a private business and therefore no constitutional power is vested in the state to fix the rates and charges for services rendered by it. The contention, in the main, of the insurance company, as stated by the Court, at page 405 of 233 U. S., is as follows:

> "The basic contention is that the business of insurance is a natural right, receiving no privilege from the state, is voluntarily entered into, cannot be compelled nor can any of its exercises be compelled; that it concerns personal contracts of indemnity against certain contingencies merely. Whether such contracts shall be made at all, it is contended, is a matter of private negotiation and agreement, and necessarily there must be freedom in fixing their terms. And 'where the right to demand and receive service does not exist in the public, the correlative right of regulation as to rates and charges does not exist.' Many elements, it is urged, determine the extending or rejection of insurance. The hazards are relative and depend upon many circumstances upon which there may be different judgments, and there are personal considerations as well—'moral hazards' as they are called."

The Court disposed of this contention of the insurance company as follows:

> "The distinction is artificial. It is, indeed, but the assertion that the cited examples embrace all cases of public interest. The complainant explicitly so contends, urging that the test it applies excludes the idea that there can be a public interest which gives the power of regulation as distinct from a public use, which, necessarily, it is contended, can only apply to property, not to personal contracts. The distinction, we think, has no basis in principle (*Noble State Bank vs. Haskell*, 219 U. S. 104), nor has the other contention that the service which cannot be demanded cannot be regulated." 233 U. S. 407.

Further referring to the effort on the part of the insurance company to distinguish its case from *Munn v. Illinois* and the other cases referred to, the Court said:

> "The principle was expressed, as to property and the instance of its application was to property, but it is manifestly broader than that instance. It is the business that is the fundamental thing; property is but its instrument, the means of rendering the service which has become of public interest." 233 U. S. 408.

Thus it will be seen that the Court in the decision of the *German Alliance Insurance Company case* extended the principle theretofore announced in the *Munn* and *Budd cases* and held that a public interest can exist in a business, such as insurance, as distinguished from a public use of property and can be the basis of power of the legislature to regulate personal contracts which are separate and apart, and disconnected from property or its use.

In this case also Mr. Justice McKenna had occasion to refer to *Brass v. Stoeser, supra*, and to point out the fact that the Court

in the decision of the Brass case advanced a step further in the application of the police power of a state than it had gone in the *Munn* and *Budd cases*.

The next case of importance is that of *Nebbia v. The State of New York*, 291 U. S. 502, 54 S. Ct. 505, decided by the Court March 5, 1934. The legislature of the State of New York in 1933 established a milk control board with power to fix minimum and maximum retail prices to be charged by stores to consumers for consumption off the premises where sold. The board of control thus created conducted a hearing and fixed both the price at which milk might be bought and the price at which it might be sold. A provision of the statute is to the effect that it "shall be unlawful for a milk dealer to sell or buy or offer to sell or buy milk at any price less or more than such price" as shall be fixed by the board of milk control. The appellant attacked the act on the ground that it denied to him due process secured by the Fourteenth Amendment. It was particularly contended that the milk industry was not a public utility and that no monopoly or monopolistic practice had been developed in the operation of the milk industry in the state and that particularly did the legislature exceed its power and authority when it undertook to fix or provide for the fixing of the actual price at which milk might be sold and purchased. In its approach to the decision of the point involved, the Court calls attention to the fact that the milk industry in the State of New York was a paramount industry and had "been progressively subjected to a large measure of control."

Then coming directly to the question involved in the case and referring to the contentions of complainant, the court said:

> "But we are told that because the law essays to control prices it denies due process. Notwithstanding the admitted power to correct existing economic ills by appropriate reg-

ulation of business, even though an indirect result may be a restriction of the freedom of contract or a modification of charges for services or the price of commodities, the appellant urges that direct fixation of prices is a type of regulation absolutely forbidden. . . . The argument runs that the public control of rates or prices is per se unreasonable and unconstitutional, save as applied to businesses affected with a public interest; that a business so affected is one in which property is devoted to an enterprise of a sort which the public itself might appropriately undertake or one whose owner relies upon a public grant or franchise for the right to conduct the business or in which he is bound to serve all who apply; in short, such as is commonly called a public utility; or a business in its nature a monopoly. The milk industry, it is said, possesses none of these characteristics, and therefore, not being affected with a public interest, its charges may not be controlled by the State. Upon the soundness of this contention, the appellant's case against the statute depends." 291 U. S. 531; 54 S. Ct. 513.

In its further approach to a decision of the question involved, the court concedes that the dairy industry is not a public utility in the accepted sense of that term and that in the particular case involved, no suggestion of any monopoly or monopolistic tendency or practice appears and that those engaged in such business are in no way dependent upon public grants or franchises for the right or privilege of conducting their activities. The court then said:

"But if, as must be conceded, the industry is subject to regulation in the public interest, what constitutional principle bars the state from correcting existing maladjustments by legislation touching prices? We think there is no such principle. The due process clause makes no mention of sales or of prices any more than it speaks of business or contracts or buildings or other incidents of property. The thought seems nevertheless to have persisted that there is

something peculiarly sacrosanct about the price one may charge for what he makes or sells and that however able to regulate other elements of manufacture or trade, with incidental effect upon price, the state is incapable of directly controlling the price itself. This view was negatived many years ago. Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77. The appellant's claim is, however, that this court, in there sustaining a statutory prescription of charges for storage by the proprietors of a grain elevator, limited permissible legislation of that type to business affected with a public interest, and he says no business is so affected except it have one or more of the characteristics he enumerates. But this is a misconception." 291 U. S. 531, 532; 54 S. Ct. 514.

The Court, discussing the scope of the ruling in the Munn case, further said:

"It is true that the court cited a statement from Lord Hale's De Portibus Maris to the effect that when private property is 'affected with a public interest, it ceases to be juris privati only;' but the court proceeded at once to define what it understood by the expression, saying: 'Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large.' Page 126 of 94 U. S. Thus understood, 'affected with a public interest' is the equivalent of 'subject to the exercise of the police power;' and it is plain that nothing more was intended by the expression." 291 U. S. 532, 533; 54 S. Ct. 514.

Further touching the import or meaning of the phrase "affected with a public interest" as used in the Munn case, the Court said:

"The statement that one has dedicated his property to a public use is, therefore, merely another way of saying that if one embarks in a business which public interest demands shall be regulated, he must know regulation will ensue." 291 U. S. 534; 54 S. Ct. 514.

Further, proceeding to the statement of the fundamental and controlling concept in such cases, the court said:

> "The touchstone of public interest in any business, its practices and charges, clearly is not the enjoyment of any franchise from the state, Munn v. Illinois, supra. Nor is it the enjoyment of a monopoly; for in Brass v. North Dakota, 153 U. S. 391, a similar control of prices of grain elevators was upheld in spite of overwhelming and uncontradicted proof that about 600 grain elevators existed along the line of the Great Northern Railroad in North Dakota; that at the very station where the defendant's elevator was located two others operated; and that the business was keenly competitive throughout the state.
>
> "In German Alliance Insurance Co. v. Lewis, 233 U. S. 389, 34 S. Ct. 612, 58 L. Ed. 1011, L.R.A. 1915C, 1189, a statute fixing the amount of premiums for fire insurance was held not to deny due process. Though the business of the insurers depended on no franchise or grant from the state, and there was no threat of monopoly, two factors rendered the regulation reasonable. These were the almost universal need of insurance protection and the fact that while the insurers competed for the business, they all fixed their premiums for similar risks according to an agreed schedule of rates." 291 U. S. 534 and 535.

In connection with its discussion, the Court at this point refers to other decided cases where statutes regulating prices of service and commodities have been sustained. Among the cases so cited is that of *Griffith v. Conn.*, 218 U. S. 563, where the price or the amount exacted for the use of money was fixed; also *O'Gorman and Young v. Hartford Insurance Co.* 282 U. S. 251, where a statute regulating the amount of compensation to agents of insurance companies is sustained; also *Frisbee v. United States*, 157 U. S. 160, and other cases where the amount to be charged by attorneys for prosecuting certain classes of

claims was fixed and sustained by the court; also *Cotting v. Kansas City Stockyards Co.*, 183 U. S. 79, where the charges made by stockyards corporations was fixed and regulated in the public interest; also *Stephenson v. Binford*, 287 U. S. 251, 274, where a statute fixing the amount to be charged by a private carrier was sustained.

After citing the cases aforesaid, the Court proceeds in the following language:

> "It is clear that there is no closed class or category of business affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or as discriminatory. *Wolff Packing Company v. Court of Industrial Relations*, Kansas, 262 U. S. 522. The phrase, 'affected with a public interest' can, in the nature of things, mean no more than that an industry, for adequate reasons, is subject to control for the public good." 291 U. S. 536, 537.

The statute of the State of New York was sutained as a valid exercise of the police power.

The four cases cited and discussed give a complete picture of the development of the law with reference to the subject at hand as declared by the Court. There were three elements shown to be present in the Munn case justifying the state legislature in fixing the maximum prices which operators of grain elevators might charge. These were (a) the fact that the grain warehousemen had reached and were perpetuating an agreement among themselves with reference to the prices to be charged; (b) by reason of their position, organization and the nature of the industry they held a virtual monopoly on the grain warehouse business

in the section of the country where they were operating; and (c) a large portion of the grain producing west was dependent upon them for the facilities and services which they furnished. The Budd case did not extend the scope of the rule announced in the Munn case. As heretofore pointed out the main effort of counsel for Budd in that case before the Supreme Court was to convince the Court that the Munn ruling was unsound and overrule it. In this, however, they failed and the Munn case was followed as sound and the settled law of the land. In the Brass case the scope of the rule announced in the Munn case was extended for as was pointed out by Mr. Justice McKenna in the case of *German-Alliance Insurance Company vs. Lewis*, it did not appear in this case that the warehousemen had either an actual or virtual monopoly of the business. Notwithstanding this fact and although the element of monopoly was not present, the Munn case was followed as the established law applicable to the facts in that case.

In the *German Alliance Insurance Company case*, there is still a further extension of the principle announced in the Munn case as the opinion in that case clearly discloses. The features developed in that case and which were held to justify statutory regulation of prices or amounts of premiums on the insurance as Mr. Justice Roberts points out in the *Nebbia case*, were only two, to wit, the universal need of insurance and the fact that the insurance companies by a common understanding among themselves had fixed and were observing a common charge. In the Nebbia case the scope of the rule is extended still further. In this case it was conceded that the business under discussion, to wit the dairy business, is not a public utility in the sense that that term has usually been accepted and it was further conceded that there was in the case no suggestion of any monopoly or monopolistic practice. It was further conceded that it was not a business dependent

upon any public grant or franchise, yet nevertheless it was held that the order of the milk board promulgated under the provisions of the statute fixing both the minimum and maximum prices of milk was valid. Mr. Justice Roberts ably discusses and analyzes many, if not all, of the cases theretofore decided by the Court touching the question at hand and the ultimate effect of the decision is to make the question of legislative power to prescribe a maximum price for any commodity or service to turn upon whether there are adequate reasons in the public interest for so doing. At page 536 of 291 U. S. it is said:

> "The phrase 'affected with a public interest' can, in the nature of things, mean no more than that an industry, for adequate reason, is subject to control for the public good."

By a majority, the statutory court, in this case, was content to rest its judgment on the *Nebbia case*. It said:

> "The Supreme Court has in the recent case of *Nebbia v. New York*, 291 U. S. 502, presented such an able and exhaustive discussion on both sides of the question as to when an occupation is so 'affected with a public interest' or 'clothed with a public use' as to be subject to legislative control to the extent of price fixing that any attempt at clarification by us would be presumption. Under that decision the statute under attack is clearly within the scope of legislative power." (Paragraph 3 of Conclusions of Law, R. 87.)

The conclusion of the Court is fully justified.

In addition to the cases we have cited above, there is a group of three cases which should be considered together and which will no doubt be helpful to the Court. They are *Frost v. Corporation Commission*, 278 U. S. 515, (1929); *Chickasha Cotton Oil Company v. Cotton County Gin Co.*, 40 F. (2d) 846 (1930); *New State Ice Company v. Liebman*, 285 U. S. 262 (1932).

By a statute of the State of Oklahoma, cotton gins in that state were declared to be public utilities and the business operated by

them affected with a public interest. A maximum charge for service rendered was provided for. The *Frost case*, while dealing primarily with the question of the nature of a franchise granted to a company under the provisions of that law assumed the validity of the act insofar as the statute declared that the ginning of cotton was so affected with a public interest that the maximum charges for services might be prescribed. The question of the constitutionality of the act came before the Circuit Court of Appeals for the Tenth Circuit in the case of *Chickasha Cotton Oil Company v. Cotton County Gin Company, supra.* The power of the legislature to enact such law was challenged as infringing the due process clause of the Fourteenth Amendment to the Constitution of the United States. All three of the circuit judges, while writing separate opinions, reached the conclusion that the business was affected with a public interest and the charges for services rendered by cotton gins were subject to statutory regulation. In the case of *New State Ice Company v. Liebman* both the *Frost case* and the *Chickasha Cotton Oil Company case* were referred to with approval, although it was pointed out that the facts in those cases were to be distinguished from the facts involved in the Liebman case. In its discussion the Court points out clearly the grounds upon which the Circuit Court of Appeals was justified in the *Chickasha Cotton Oil Company case* in holding the business there involved to be affected with a public interest and the charges for services rendered subject to statutory regulation. These grounds as set forth on page 276 of 285 U. S. are:

1. Cotton production is one of the chief industries of the State of Oklahoma and is of such paramount importance as to justify the assertion that the general welfare and prosperity of the State in a large and real sense depend upon its maintenance.

2. The cotton gin bears the same relation to the cotton grower that the old grist mill did to the grower of wheat.

3. The service is a necessary one with which ordinarily the grower cannot dispense.

4. The grower is compelled to resort for such service to the establishment which operates in his locality.

5. The grower is so dependent upon the gin that he faces the practical danger of being placed at the mercy of the operator with respect to exorbitant charges and arbitrary control.

6. The relation between the grower and those engaged in furnishing the service is a peculiarly close one in respect to an industry of vital concern to the general public.

One quickly discovers, in the tobacco warehouse business and the manner of conducting it, every element or factor, which the Court points out as justifying a holding that the cotton gin as operated in the State of Oklahoma is "affected with a public interest."

Furthermore, it has generally been considered where tobacco warehouses have operated that their method of operation is such as to require statutory control. As early as the year 1921 the General Assembly of Georgia, recognizing the fact that the business of the tobacco warehouseman is affected with a public interest enacted a regulatory statute by the terms of which proprietors of bright leaf tobacco warehouses were required, at stated intervals, to furnish the Commissioner of Agriculture information with reference to their respective operations. Acts 1921, page 210; Code of 1933, Sections 111-201 to 111-206. Further recognizing the fact that the business of warehousemen is affected with a public interest, in the year 1927 the Legislature of Georgia went so far as to exempt auctioneers at these warehouses from payment of the special tax of $100.00 required of other auctioneers. Georgia Code of 1933, Section 92-1901.

For many years there has been in force in the State of Virginia a statute regulating the sale of tobacco in the warehouses in that state and it goes to the extent of fixing a maximum fee or charge for services rendered. Virginia Code of 1924, Sections 1376 to 1381. Several years ago, South Carolina also adopted a regulatory statute by the terms of which the maximum prices, charges and fees to be exacted by warehousemen for services rendered are definitely fixed. South Carolina Code of 1932, Section 7197. The Georgia statute here under attack is almost a verbatim copy of the South Carolina statute.

Likewise, the State of North Carolina for a long number of years has had in force a statute prescribing maximum charges which tobacco warehousemen may make in the operation of their businesses. Consolidated Statutes of North Carolina, Section 51-24. In the case of *Gray v. Central Warehouse Co.* (N. C. Supreme Court), 106 S. E. 657, (1921), Mr. Chief Justice Clark, speaking for the Court, said:

> "As far back as the history of the state extends, the business of tobacco warehouses has been, if not a public duty, always affected with a public use. To the fullest extent, therefore, regulation and control by the public has been recognized and enforced in this state."

In this case, further discussing the history of regulation in the State of North Carolina, the court said:

> "The entire history of the state and the statutes on this subject as well as our present statutes place the regulation of tobacco warehouses, not under private control, as defendants have assumed ,in this case, but under the control of the public authority."

Another interesting case decided by the Supreme Court of Kentucky, a tobacco growing state, is *Parnell v. Louisville Tobacco Warehouse*, 113 Ky, 630.

The Supreme Court of Kentucky in this case was speaking with reference to an act of the legislature of that state approved in 1892 regulating the operation of tobacco warehouses even to the extent of fixing the prices charged for services rendered by such houses. Among other things the court said:

> "The right of a state to prescribe reasonable rates is unquestionable. The only question is whether the rates prescribed are so unreasonable as to be in their nature confiscatory. The rule is that the judiciary will not interfere with the collection of the rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use, without such compensation as, under all the circumstances, is just both to the owners and to the public; that is, judicial interference should never occur unless the case presents clearly and beyond all doubt such flagrant attack upon the rights of property under the guise of regulation as to compel the court to say that the rate prescribed will necessarily have the effect to deny just compensation for private property taken for the public use."

When the history of regulatory statutes in the states where bright leaf tobacco is grown and sold in public warehouses, is noted, an observation of Mr. Justice McKenna in *German Alliance Insurance Company v. Lewis*, 233 U. S. 412. becomes significant. There it had been pointed out that a large number of states had adopted regulatory statutes of one kind or another affecting the business of insurance and after referring to this fact the learned Justice said:

> "Those regulations exhibit it to be the conception of the law-making bodies of the country without exception that the business of insurance so far affects the public welfare as to invoke and require governmental regulations. A concepiton so general cannot be without cause. The universal

sense of a people cannot be accidental; its persistence saves it from the charge of unconsidered impulse, and its estimate of insurance certainly has substantial basis." 233 U. S. 412.

And so it is here. The fact that the several states where bright leaf tobacco is grown and sold, as the industry has developed, have enacted regulatory statutes even to the point of fixing prices cannot be accidental. There must be some basis for the existence of a legislative policy so general. Most probably Mr. Chief Justice Clark in the case of *Gray v. Central Warehouse Co., supra*, discovered and stated the principal cause or basis for all of these regulatory statutes in these words:

> "In fact, there is no subject in which the protection of the producers against extortions and combinations to reduce prices is more important."

Indeed, statutory regulation of price is usually directed toward the prevention of fraud and exorbitant demands either of buyers or sellers and is always justified wherever a situation or combination of circumstances exists which materially restrict the regulative force of competition so that the buyer or seller, as the case may be, is placed at a disadvantage in the bargaining struggle; where a full level of equality of choice as between the buyer and seller does not exist; where from the nature of the business or otherwise the buyer or seller, as the case may be, occupies a position which may be described as necessitous; and where from the circumstances of the case the strategic position of one group is such as to enable it to impose its will in matters of price upon those who sell or buy and who in the ordinary course of the particular business must deal with the person occupying the strategic position. In such cases, "self interest is not permitted to invoke constitutional protection at the expense of the public." See opinion of Mr. Justice Stone, *Tyson & Bro. v. Banton*, 273 U. S. 451.

See also *West Coast Hotel Co. v. Parrish*, No. 293 Oct. Term, 1936, decided March 29, 1937.

Obviously one of the objectives which the Georgia Legislature intended to accomplish by the enactment of the statute complained of was to prevent imposition and excessive charges to the injury of a large class of tobacco growers occupying necessitous circumstances with respect to the warehouseman. This is no doubt the main object of the law and certainly it cannot be said with reason that the act has no reasonable or substantial relation to the object or purpose. The court however is not particularly concerned with the particular object which the legislative branch of the government had in mind at the time the challenged statute was enacted. It is not concerned with the question of motive or of wisdom or discretion. It is concerned here only with the question of power and if the General Assembly of Georgia is vested with power to enact such a law under any circumstances that might exist we must accept the act as a valid exercise of its prerogative.

> "If no state of circumstances could exist to justify such a statute, then we may declare this one void because in excess of the legislative power of a state. But if it could, we must presumed it did. Of the propriety of legislative interference within the scope of legislative power the legislature is the exclusive judge." *Munn v. Illinois*, 94 U. S. 132, 133, 24 L. Ed. 86).

Attention is also called to the case of *Rast v. Van Deman & Lewis*, 240 U. S. 365, 366, where it is said:

> "And it is not required that we should be sure as to the precise reasons for such judgment or that we should certainly know them or be convinced of the wisdom of the legislation. *Southwestern Oil Co. v. Texas*, 217 U. S. 114, 126, 127. See also *Munn v. Illinois*, 94 U. S. 113." *Cotting v.*

Kansas City Stockyards, 183 U. S. 79; *McLean v. Arkansas*, 211 U. S. 539; *Noble State Bank v. Haskell*, 219 U. S. 104; *O'Gorman & Young v. Hartford Fire Insurance Co.*, 282 U. S. 251. *West Coast Hotel Co. v. Parrish*, ... U. S. ....., No. 293 Oct. Term, 1936, Decided March 29, 1937.

Cases may, of course, be found in which this Court has held that attempted statutory regulation, as to particular facts, circumstances or businesses was in excess of the power which legislative bodies might exercise and, for that reason, contravene the due process of law clause of the Federal Constitution. But such cases may be easily distinguished from the case here under review.

Tobacco production is one of the chief agricultural industries of the state. It is of such paramount importance as to justify the assertion that the general welfare and prosperity of the people of a large portion of the state, in a real sense, depends upon its maintenance. See paragraph 5 Court's finding, R. 77-78, and to which exceptions are not taken. In the normal and customary course of marketing in Georgia, tobacco can only be sold in warehouses located in the Georgia Tobacco Belt. See paragraph 9 Court's finding, R. 80, and to which exception is not taken. In 1935 there were forty-five warehouses in the Georgia Tobacco Belt available to the growers for the sale of their tobacco crop. These forty-five warehouses were operated by the forty-four complainants filing the original bill in this case. There is no warehouseman in the Belt who did not join in the suit. Such was the situation in 1934 and in March, 1935, when the Act was passed. And while exception is taken to the Court's finding (part of paragraph 10, R. 80) that prior to 1927 the warehousemen in Georgia, for many years, if not from the beginning of the industry, had maintained and exacted from sellers of tobacco a uniform schedule of charges, substantially, if not

identically, the same as the schedule fixed by the Act of 1935, it is not denied, but in fact is conceded, that the warehousemen in 1934, throughout the Belt, had maintained a uniform schedule of charges to the growers for services rendered and expected to do so in 1935. See original bill, paragraph 8, subdivision D, R. 9-10. Among the warehousemen there had been organized The Georgia Tobacco Warehousemen's Association, and all appellants were and are members of said Association. The growers were not eligible for membership. The Association, with the buyers, determine the date when markets open and substantially the date on which the markets close. The Association undertakes to deal with such practices as affect the interests of the members thereof and adopt regulatory rules to be observed by such members. A new member is admitted when he becomes identified with the tobacco warehouse business in Georgia, and promises to be governed in his charges by the schedule of fees then in effect throughout the State of Georgia fixed by the Association. The matter of fees and charges to the growers was discussed at a meeting of the Association in 1934. Obviously a suggestion was made in such meeting of the Association that fees and charges be reduced though it does not appear whether the suggestion came from within or without the Association. "After discussion of the matter it was decided that no change should be made in charges, but that if any were made it would be higher instead of lower." Thus indicating concerted action on the part of the members of the Association to maintain a uniform level of fees and charges. See Paragraph 20 Court's finding, R. 85-86, and note that the recitals of fact as set out above in this finding are not excepted to.

So much being admitted or conceded, it necessarily follows that the facilities and service offered by the warehousemen can not, in ordinary and normal course of marketing, be dispensed with by the growers; that the growers are, for such service, com-

pelled to resort to the warehouses in their respective localities; that the tobacco warehouse bears the same relation to the tobacco grower that the old grist mill did to the wheat grower; that the tobacco grower, is so dependent upon the tobacco warehousemen that he faces a practical danger of being placed at their mercy with respect to exorbitant charges and arbitrary control; that the relation between the grower and those engaged in furnishing the service is a peculiarly close one; that the warehousemen, by reason of their common agreement or understanding and concert of action, occupy a position of advantage with respect to the marketing bargain; that they enjoy what is referred to in *Munn v. Illinois*, supra, as "a virtual monopoly"; that they have "an unduly coercive control over prices charged", unless regulated by law.

But appellants contend that the rule announced and applied in the cases cited and discussed in this division of appellees' brief are without force or application to them, for the reason, as they say, that the tobacco warehouse business in Georgia is a wide open field, and that any person is at liberty to open and operate a tobacco warehouse, provided only he can finance the venture and secure skilled employees.

The asserted distinction is not real. The same factor appeared in the situation dealt with in all the cases upon which we rely. Any one possessing the requisite capital could have entered the grain warehouse business in Chicago in competition with Munn and Scott or could have entered the grain elevator business in New York in competition with Budd and his associates, or could have entered the grain warehouse business in North Dakota in competition with Brass and others then operating grain warehouses, and certainly there was no reason why any person possessing the requisite capital could not have entered the insurance business in Kansas at the time the statute involved in *German*

Alliance Insurance Company v. Lewis was enacted. And in *Nebbia v. New York* it was expressly conceded that neither a monopoly nor a monopolistic tendency was involved.

We are not prepared to admit, therefore, that either a monopoly or a monopolistic tendency is a requisite element or factor upon which legislative power to prescribe maximum prices is conditioned. However that may be, one thing here is certain; If appellants were not, at the time the Georgia Act was passed, maintaining an air-tight monopoly in the tobacco warehouse business in Georgia and if, since that time, they have not been maintaining such monopoly it is not due to any act, purpose, or intent on their part or on the part of either of them. They have done all they could to accomplish such end. And to say that outsiders might have broken the monopoly which they formed certainly is not a satisfactory answer for them to make.

III.

THE ACT IS NOT, IN EFFECT, UNREASONABLE, ARBITRARY OR CAPRICIOUS.

We omit for the present a discussion of the Act from the standpoint of the revenue permitted thereby and the contention of appellants that the Act is unreasonable and arbitrary on that ground. That question is reserved for a separate division of this brief.

Here we wish to note other contention of appellants to the effect that the Act is unreasonable arbitrary, and capricious and particularly the grounds upon which such contentions are based. For instance, it is charged in the Bill and asserted in appellants' brief that the challenged Act is unreasonable, arbitrary and capricious in that there was no investigation of the subject of tobacco marketing in Georgia by the legislature prior to the enact-

ment of the statute; that the people, or legislative body, who passed the purported Act, knew little of it; that there was no demand for regulation by the tobacco growers; that the Act was not passed in response to an emergency. See R. 39-42 and appellants' brief, point D.

It will easily be seen that these questions are all questions or issues which address themselves to the legislative body and are concluded by the proper enactment and enrollment of the law.

In *Clements, et. al. v. Powell, Tax Collector*, 155 Ga. 278, the Supreme Court of Georgia, speaking with reference to a duly enrolled Act of the General Assembly, said:

> "We are not at liberty to inquire into the motives of the legislature. Ex Parte McCardle, 7 Wall. 504. The courts will conclusively presume that no general laws are ever passed either through want of information on the part of the legislature, or because it was misled by false representations of interested parties. 8 Cyc. 304."

In *Dorsey, Governor, v. Wright*, 150 Ga. 321, the Supreme Court of Georgia said:

> "A duly enrolled Act, properly authenticated by the regular presiding officers of both houses of the General Assembly, approved by the Governor, and deposited with the Secretary of State, as an existing law, will be conclusively presumed to have been enacted in accordance with constitutional requirements."

See also *Atlantic Coast Line Railroad Co. v. The State*, 135 Ga. 545.

While the cases cited are from a state court, the doctrine announced and declared is in accordance with the current of authority both state and federal.

In *Chesapeake & Potomac Telephone Co. v. Manning*, 186 U. S. 238, 46 L. Ed. 1144, 22 S. Ct. 881, the Court, at page 245, said:

> "But it is well settled that the courts always presume that the legislature acts advisedly and with full knowledge of the situation. Such knowledge can be acquired in other ways than by the formal investigation of a committee, and courts cannot inquire how the legislature obtained its knowledge. They must accept its action as that of a body having full power to act, and only acting when it has acquired sufficient information to justify its action."

In *Chicago, B. & Q. R. Co. v. McGuire*, 219 U. S. 549, 55 L. Ed. 238, 31 S. Ct. 259, the Court, at page 569, said:

> "The scope of judicial inquiry in deciding the question of power is not to be confused with the scope of legislative considerations in dealing with the matter of policy. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance."

In *Northern Securities Company v. United States*, 193 U. S. 197, 48 L. Ed. 679, 24 S. Ct. 436, the Court, at page 350, said

> "So long as Congress keeps within the limits of its authority as defined by the constitution, infringing no rights recognized or secured by that instrument, its regulation of interstate and international commerce, whether founded in wisdom or not, must be submitted to by all."

In *Wilson v. New*, 243 U. S. 332, 61 L. Ed. 755, 37 S. Ct. 298, the Court, at page 358 said:

"While it is a truism to say that the duty to enforce the constitution is paramount and abiding, it is also true that the very highest of judicial duties is to give effect to the legislative will, and in doing so to scrupulously abstain from permitting subjects which are exclusively within the field of legislative discretion to influence our opinion or to control judgment."

Another contention put forth by appellants is that no board or other body was created to ascertain the facts relevant to the business of tobacco warehousing and that no hearing was given by the legislature to the interested parties prior to the enactment of the law and it is urged that the challenged Act is unreasonable, arbitrary and capricious for this reason. See allegations of original Bill, R. 39, and brief of appellants, point D.

The contention is completely answered in *Dayton-Goose Creek Railroad Company v. United States*, 263 U. S. 456, 486. In this case the Court had before it for consideration the recapture clause of the Transportation Act of 1920, and it was contended by the railway company that that particular portion of the Act was unconstitutional for the reason that no board or commission was created to investigate and make findings of fact with reference to the reasonableness of the net rate allowed to the carrier. The Court disposed of the contention as follows:

"It is further objected that no opportunity is given under Section 15A for a judicial hearing as to whether the return fixed is a fair return. The steps prescribed in the act constitute a direct and indirect legislative fixing of rates. No special provision need be made in the act for the judicial consideration of its reasonableness on the issue of confiscation. Resort to the courts for such an inquiry exists under Section 208 and 211 of the Judicial Code. It is only where such opportunity is withheld that a provision for legislative fixing of rates violates the Federal Constitution. *Ohio Valley Water Co. v. Ben Avon*, 253 U. S. 287."

In the *Ohio Valley Water Company case* cited, the Court, at page 289 of 253 U. S., in effect, held and stated that the requisite of due process on any issue as to confiscation is met where the state provides a fair opportunity of submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts. See also *Budd v New York*, 143 U. S. 517, 546.

The answer made to complainants' contention in the *Dayton-Goose Creek case* and the *Budd case* is a proper and sufficient answer to appellants' contention here. The Georgia Act directly prescribes the rates to be charged. The general laws and statutes of the State of Georgia provide opportunity for submitting any issue of confiscation or arbitrariness to a court of equity for determination upon its own independent judgment as to both law and facts.

In the State of Georgia the Superior Courts are courts of original jurisdiction and by Section 37-101 of Georgia Code of 1933, it is provided.

> "All equity jurisdiction shall be vested in the Superior Courts of the several counties."

By Section 37-102 of said Code it is provided:

> "Equity jurisdiction is established and allowed for the protection and relief of parties, where, from any peculiar circumstances, the operation of the general rules of law would be deficient in protecting from anticipated wrong or relieving from injuries done."

By Section 37-124 of said Code, it is provided:

> "Generally, equity jurisprudence embraces the same matters of jurisdiction and modes of remedy as were allowed and practiced in England."

By Section 55-101 of said Code, it is provided:

> "Equity, by a writ of injunction, may restrain proceedings in another or the same court, or a threatened or existing tort, or any other act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law."

See Title 37, Georgia Code of 1933, which deals generally with the subject of equity jurisprudence and remedies as allowed in the State of Georgia.

Besides, the constitutionality of the act might, under the general laws and statutes of the state, be presented and determined in any prosecution or proceeding had or brought with reference to the enforcement of the act. The foregoing references are given and statements made to the end that the Court may see that the State of Georgia fully protects and provides a remedy to any person aggrieved or injured by the enforcement of an act that is unconstitutional and, certainly, it will not be held that every person or citizen who may be affected directly or indirectly by a legislative enactment is entitled to an elaborate hearing before either a legislative committee or a board created to conduct an investigation of fact before the legislature may enact a law or that, in the absence of such hearing, courts will strike down a general law duly enacted and enrolled as being arbitrary, unreasonable and capricious. Further, certainly it will not be expected that a court will undertake to determine whether or not the law was enacted in response to an emergency or whether there was adequate investigation on the part of the legislature before its enactment or whether a more appropriate legislative procedure or workable plan or scheme could have been found in the creation of a board or public body than the direct legislative enactment. These are all matters addressing themselves to

the discretion of the General Assembly. It was for the legislature itself to make the choice of means by which its objective was to be secured.

Virginia Railway System v. System Federation No. 40, — U. S.....,, No. 324 October Term, 1936.

Such determination is without the function or jurisdiction of the courts.

Still another contention made by appellants is that the statute creates a hard and fast rule and does not make provision for a variation in crop conditions or other circumstances which may arise, and, for this reason, they urge that the Act is arbitrary, unreasonable and capricious. R. 40-41 and brief of appellants, point D.

The contention is wholly without merit.

Rate making is a legislative function whether exercised by the legislature or by a subordinate body to which such power has been delegated.

Knoxville v. Knoxville Water Works, 212 U. S. 1.

The Georgia Act undertakes only to prescribe maximum fees and charges and such rates are prescribed for operation in the future. Present conditions and past experience are relevant and pertinent only insofar as they enable the rate making body, whether it be legislature or business board, to forecast the future and determine reasonable rates for application during such future period. The courts must test the validity of such enactment in the light of presently known and existing conditions and circumstances. If a rate, whether prescribed by legislative enactment, or order of a regulatory board by reason of changed con-

ditions or circumstances, becomes confiscatory as applied to the business of any particular person, courts can relieve and protect that person when such circumstances or conditions are shown to exist.

"A statute valid when enacted may become invalid by a change in the conditions to which it is applied." *Nashville, Chattanooga & St. Louis Ry. v. Walters*, 294 U. S. 405; *Smith v. Illinois Bell Telephone Company*, 282 U. S. 162; *Des Moines Gas Company v. Des Moines*, 238 U. S. 153; *Lincoln Gas Company v. Lincoln*, 250 U. S. 256; *Brush Electric Company v. City of Galveston, et al.*, 262 U. S. 443; *Bluefield Water Works, v. Pub. Ser. Comm. of West Virginia*, 262 U. S. 679; *Lindheimer, et al. v. Illinois Bell Telephone Company*, 292 U. S. 155.

The Act is not shown to be unconstitutional, arbitrary, unreasonable or capricious in the light of conditions as they now exist. If hereafter, by reason of divergent, varying or fluctuating circumstances or conditions, the act becomes unconstitutional when applied to appellants or any one of them, it will be sufficient time to raise that question when those circumstances may become actual realities.

In addition to the authorities cited above, see *Erie R. Co. v. Williams, Commissioner*, 233 U. S. 685, 699; *Hamilton v. Kentucky Distilleries*, 251 U. S. 146; *Champion v. Ames* (*Lottery Case*), 188 U. S. 321; La *Tourette v. McMaster*, 248 U. S. 465; *Bunting v. Oregon*, 243 U. S. 426; *Standard Oil Company v. Marysville*, 279 U. S. 582; *Zahn, et al. v. Board of Public Works*, 274 U. S. 326; *Fong Yue Fing v. United States*, 149 U. S. 698; *Mountain Timber Company v. Washington*, 243 U. S. 219.

It is respectfully submitted, therefore, that appellants have failed to make good their claim that the challenged Act is un-

reasonable, arbitrary, capricious and unconstitutional for any of the reasons or upon any of the grounds dealt with in this division of appellees' brief.

IV

THE ALLEGATIONS OF THE BILL AS AMENDED AND THE EVIDENCE ADDUCED ARE INSUFFICIENT TO PRESENT A FEDERAL QUESTION FOR DETERMINATION AS TO THE ALLEGED UNREASONABLENESS OF THE GEORGIA ACT FROM THE STANDPOINT OF THE REVENUE PERMITTED THEREBY.

Appellants make the contention that the challenged act is unreasonable, arbitrary and capricious in that, as they contend, their revenue or returns are reduced by its enforcement (See original Bill and First Amendment, R., pp. 10 and 39-44.) Appellees respectfully contend that the record presents no question in that respect to be determined by the Court. An act can be unreasonable from the standpoint of the return or revenue permitted or allowed only when the revenue or return is reduced by the enforcement of the act to the point of confiscation.

The petition as amended discloses that there are forty-four complainants, each operating a separate warehouse business. No proprietor or operator has any pecuniary interest in the business or income of any other operator. The several businesses are prosecuted as individual units and the operators respectively are interested in the business and income only of the unit which he operates. If the operator makes a profit from any particular unit he gets it; if he sustains a loss, he bears it. And while the appellants have a common understanding that the fees or charges made by each for service rendered shall be the same, there is strenuous competition between them for the poundage available in any season or locality. (See Paragraph 12, Court's Finding, R. 81).

Particularly the allegations of the original bill and the amendment with reference to the effect of the act on the tobacco warehouse business from the standpoint of revenue permitted should be noted. In the eighth paragraph of the original bill, subdivision (e), (R. 10) it is generally alleged that the application of the schedule of charges fixed by the act will produce a reduction of from twenty to thirty per centum in the former charges. Following this statement complainants undertake to illustrate by specific examples the manner in which reductions will occur. Subdivision (f) of the eighth paragraph is as follows:

> "The charges prescribed by the aforementioned schedule fixed in said purported act are unjust and unreasonable and will not provide to your orators an adequate reward for the time and service rendered and for the use of their respective properties." (R. 10).

Subdivision (h) of the eighth paragraph is as follows:

> "The said schedule of maximum charges prescribed by said purported act if put into effect, will deprive each of your orators of his, their or its property without due process of law and will deprive him, them or it of the equal protection of the law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, upon which your orators rely." (R. 11).

In the ninth paragraph, speaking with reference to the effect of the enforcement of the act, there is a clause in the following words:

"And which will result in the taking of your orator's respective properties without due process of law," (R. 11) and in the fifteenth paragraph it is alleged that

"Said charges and expenses will work a reduction esti-

mated at twenty to thirty per centum in the charges of your orators resulting in very great loss to them, and the use of their organizations, their time, skill and their plants and equipment on a basis of reward which is very much less than reasonable and which is unjust, unreasonable and confiscatory, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States of America." (R. 13).

In the original bill there is no allegation whatsoever giving to the court any information as to the value of the property employed by complainants or any of them in the tobacco warehouse business nor is there any allegation of fact to indicate what profits they had made under the old rates referred to in their petition nor is the necessary cost of operation set out. The petition contains, as the Court will observe, only general allegations as to the effect of the act from a revenue standpoint and no facts are alleged from which the Court may determine whether the new schedule of rates when applied will yield a fair return or will be confiscatory.

In the first amendment, complainants apparently undertook to remedy this defect in the original bill but in fact the allegations of the amendment help little, if any. These allegations with reference to the revenue effects of the act are to be found in Paragraph Seven of the Amendment (R. 43) as follows:

"The value of the physical properties devoted by the complainants to the tobacco warehouse business in Georgia, including l a n d s, buildings, and equipment, exceeds $1,000,000. In addition to this there is the value of the warehousemen's time, their skill and experience which they devote to this business, this varying with the individual, but it is property and as property must yield a reasonable return. Each warehouseman also uses a large amount of cash as working capital in the operation of the business.

This amount varies with the volume of each warehouse, but the total working capital necessary to carry on this business is in excess of the sum of $500,000.00.

"The gross income of the business is less than six per cent. (6%) of the value of the tobacco crop. The Georgia 1934 crop of tobacco was 38,027,176 pounds valued at $7,131,685.15. The 1933 crop was in excess of 60,000,000 pounds but the value thereof was less than $7,000,000.00.

"The gross expenses of operating the tobacco warehouse business in Georgia are in excess of four and one-half per cent. (4½%) of the value of the crop.

"If the scale of charges sought to be applied by the purported Act of the General Assembly of Georgia of 1935, had been in force during the 1934 tobacco selling season, the gross income of the business would have been reduced by not less than twenty-five per cent. (25%), so that on the minimum basis of a million and one-half dollars, which is merely the value of the physical properties used, there would be no return on this value, as expenses would have equalled income. It is alleged, however, that the value of the properties used, including the personal element of time, skill, and experience of the warehousemen, is far greater than a million and one-half dollars and the gross expenses exceed four and one-half per cent. (4½%) of the value of the tobacco crop."

It will be observed that these allegations are made with reference to the warehouseman, the property employed, the expenses of operation and the rate of return as a group. No facts whatsoever are alleged with respect to any particular individual complainant or his business.

The allegations are insufficient to raise any question for determination by this Court.

Paragraphs six of the original answer and one and five of the supplemental answer appropriately challenge the sufficiency of

these allegations. (R. 29, 46, 47). In connection with this contention we invoke two well established rules of law.

1. PLEADINGS AND EVIDENCE ON AN ISSUE AS TO THE UNREASONABLENESS OF A SCHEDULE OF RATES FROM A REVENUE STANDPOINT MUST BE DEFINITE AND CERTAIN.

The first rule to which we refer is stated in the preceding caption of this division.

In *L. & N. R. Co. v. Garrett*, 231 U. S. 298, 58 L. ed. 229, H. N. 8, the court states the rule as follows:

> "A case of confiscation entitling a carrier to injunctive relief against an order fixing maximum intrastate freight rates on certain commodities between specified points is not made by a bill which, apart from general averments, merely alleges that certain specified losses in revenue will result, without any showing as to the value of property employed, the expenses of operation or the return which will be permitted under the rates prescribed."

The rule was followed in *Aetna Insurance Company v. Hyde*, 275 U. S. 440. That case was very similar in its facts to the instant case. There a complaint was brought by one hundred and fifty-six companies, being all of the stock fire insurance companies engaged in the fire insurance business in the State of Missouri. The complaint, in addition to seeking a review of a rate order of the Superintendent of Insurance in the state court, complained that the prescribed rates were unreasonable, inadequate and confiscatory and that the enforcement of the rate order would operate to deprive the petitioners and each of them of their property without due process of law in contravention of the Fourteenth Amendment to the Federal Constitution. The complaint contains specific allegations with reference to the insur-

ance business as a whole, showing that the prescribed rates were so low that the rate order in its operation generally would compel the companies to operate at a loss. These allegations, almost identical with the purport of the first amendment to the bill of complaint in the instant case are found on page 443 of 275 U. S. of the *Aetna Insurance Company case*. Certainly those allegations showed that in its general operation, the rate order would make the business of stock fire insurance unprofitable to those engaged in it and yet the court held that no Federal question was presented by the complaint. The Court, addressing itself to the question at issue, at page 447 of 275 United States, said:

> "Allegations asserting in general language that the finding, order and reduced rates are confiscatory and repugnant to the Fourteenth Amendment are not sufficient. In order to invoke the constitutional protection, the facts relied on to restrain the enforcement of rates prescribed under the sanction of state law must be specifically set forth, and from them it must clearly appear that the rates would necessarily deny to the plaintiff just compensation and deprive it of its property without due process of law. *L. & N. R. Co. v. Garrett*, 231 U. S. 298, 314; *Atlantic Coast Line v. Florida*, 203 U. S. 256. Jurisdiction of this court to set aside state-made rates as confiscatory will be exercised only in clear cases. And the burden is on one seeking that relief to bring forward and satisfactorily prove the invalidating facts."

Speaking further to the same point the Court at page 448 of 275 U. S., said:

> "The complaint did not allege any facts to show that the reduced rates were confiscatory as to any company. The court was not called upon to determine whether the order would operate to deprive any company of its property without due process of law."

Even if complainants in this case comprised one large company, involving only one legal entity, the facts as pleaded are not sufficient to call for a decision by this Court on the question of confiscation or reasonableness of the Act from a revenue standpoint as applied to the aggregate property, service and income of the group, and certainly it cannot be said that the allegation of the bill as amended disclose any fact indicating that the rates prescribed are unreasonable from the standpoint of revenue permitted thereunder when applied to the individual businesses of the several appellants or to the individual units of the businesses represented by the appellants respectively.

The question of the insufficiency of the bill of complaint as amended in this respect was raised in the trial court and complainants were given the right by the court to amend the complaint so as to show the effect of the statute from a revenue standpoint as to each complainant separately and to introduce evidence thereon. (See order January 31, 1936, R. 61). Appellants elected not to amend and did not introduce additional evidence. That they did not do so can be easily accounted for by the fact that the evidence shows beyond any dispute or question that a large number of appellants are making and can make substantial or large profits under the statutory charges. See order January 31, 1936, R. 61; Motion and Order July 15, 1936, R. 70-74; page 2 Court's Finding and Conclusion, R. 75-76.

2. APPELLANTS CANNOT IN THE AGGREGATE OR BY THE ENTIRE GROUP OF WAREHOUSEMEN ATTACK THE ACT AS UNREASONABLE FROM THE STANDPOINT OF REVENUE PERMITTED.

The other rule of law which we desire to invoke is that the plaintiff cannot *en masse* or in the aggregate or by groups attack the act in question as unreasonable on the ground that the reve-

nue permitted thereunder would be insufficient and that thereby they as a group will be deprived of their property without due process of law. This question can be raised only by the individual proprietor or unit.

The reason for this rule is obvious. The rates in question are applicable to all companies alike operating in a single territory and in competition with each other. In such case, some of them will make a fair profit or return and probably others would not. But certainly no warehouseman whose return or profit under the schedule of rates prescribed by the act is fair and reasonable would be entitled to attack the act as unconstitutional because his competitor under that schedule was unable to make a fair profit. Yet this is exactly what appellants are endeavoring to do. In practice each appellant wages warfare against his competitor, the other appellants herein, for available poundage, but after that warfare has been waged and won the same appellant, who is making a fair return and good profits under the new schedule of rates undertakes to claim that the income of such competitor, necessarily reduced by the warfare, is not sufficient to satisfy due process of the Fourteenth Amendment to the Federal Constitution, and that accordingly higher rates should be maintained for the benefit of both himself and his less fortunate competitor. Clearly the warehouseman whose profits or return is inadequate, alone can attack the act on the ground that it is unlawful from the standpoint of revenue permitted.

In the case of *Heald v. District of Columbia*, 259 U. S. 114, 123, the Court said:

> "It has been repeatedly held that one who would strike down a state statute as violative of the Federal Constitution must show that he is within the class of persons with respect to whom the act is unconstitutional and that the alleged unconstitutional feature injures him."

In *Plymouth Coal Company v. Pennsylvania*, 232 U. S. 531, 544, the Court said:

> "We may once more repeat what has been so often said, that one who would strike down a state statute as violative of the Federal Constitution must show he is within the class with respect to whom the act is unconstitutional, and must show that the alleged unconstitutional feature injures him, and so operates as to deprive him of rights protected by the Federal Constitution."

In *Thomas Cusack Company v. Chicago*, 242 U. S. 526, 530, the Court said:

> "He who is not injured by the operation of a law or ordinance cannot be said to be deprived by it of either constitutional right or of property."

In *Arkadelphia, etc. Company v. St. L. Sw. R. Co.*, 294 U. S. 134, 149, the Court said:

> "It is most thoroughly established that before one may be heard to strike down state legislation upon the ground of its repugnancy to the Federal Constitution he must bring himself within the class affected by the unconstitutional feature."

We refer again to the case of *Aetna Insurance Company v. Hyde*, 275 U. S. 440. Attention has already been called to the similarity in purpose and scope of that proceeding to the instant case. Dealing with the question presented the Court, at pages 446 and 447 of 275 U. S., said:

> "The reduced rates are applicable to the business of all companies alike and without regard to the amount of the past or prospective profits or losses of any of them. And the attack is by joint action of all the companies. It is not

claimed by or in behalf of any company that, when applied to its business, the reduced rates are or would be too low to permit the company to make a reasonable profit or to have just compensation for its contracts of insurance.

"No company receiving just compensation is entitled to have higher rates merely because of the plight of its less fortunate competitors. Companies whose constitutional rights are not infringed may not better their position by urging the cause of others. *Supervisors v. Stanley*, 105 U. S. 305, 311; *Heald v. District of Columbia*, 259 U. S. 114. As a practical matter of business, it is impossible in the long run for some companies to collect higher premiums than those charged by others in the same territory. Rates sufficient to yield adequate returns to some may be confiscatory when applied to the business of others. But the latter have no constitutional right to prevent their enforcement against the former. The Fourteenth Amendment does not protect against competition. Moreover, 'aggregate collections' sufficient to yield a reasonable profit for all do not necessarily give to each just compensation for the contracts of insurance written by it. It has never been and cannot reasonably be held that state-made rates violate the Fourteenth Amendment merely because the aggregate collections are not sufficient to yield a reasonable profit or just compensation to all companies that happen to be engaged in the affected business. *Aetna Insurance Company v. Hyde*, 275 U. S. 446, 447.

At page 448 in the same case the court proceeds as follows:

"The petitioners are competitors and each carries on business for itself. While they may be joint action pursue the remedy given by Sec. 6284, it does not follow that the Constitution safeguards aggregate profits sufficient to constitute just compensation for all the companies. The complaint fails to show any joint interest or right in or to the business covered by the rates or the protection sought to be invoked. And it fails to show that the business in Missouri

of each is so well and economically organized and carried on that petitioners are entitled, as of right protected by the Constitution, to have premiums amounting in the aggregate enough to yield a reasonable return or profit to all the companies. . . . No federal question is presented."

As stated above, appellants in their bill as amended deal with the value of their properties, the value of their service and their gross and net incomes in the aggregate. For the sake of argument, it might be conceded that they jointly and as a group, might raise the question as to the legislative power to enact the law, but the issue as to whether or not it is reasonable from the standpoint of revenue permitted is entirely different. The group cannot raise that issue for the individual, the individual cannot raise it for the group and plainly no individual or business unit can raise it for another individual or business unit in which the complainant is in no way interested or concerned. In the instant case the right of each complainant to obtain relief from the charges upon the alleged ground that the act is arbitrary and unreasonable in that it does not permit sufficient revenue to appellants, must be separately raised and determined according to the evidence with reference to each individual operation. Those who own a negligible or small amount of property and are enjoying a considerable profit under the statutory rates, obviously cannot say that this law infringes any of their constitutional rights insofar as the revenue permitted is concerned. If warehouse operators using property of much greater value can successfully make out a case of confiscation entitling them to higher rates and they choose to invoke the Fourteenth Amendment, they have the right to do so. It would certainly be convenient for such operators, if any, who could prove confiscation to hold up the rates for the benefit of all so that all might make greater profits and so that the infringed operators might continue to compete for business with less extravagant warehousemen, but

the Fourteenth Amendment does not provide any such convenience.

V.

PRESUMPTION AND BURDEN OF PROOF

The statute is presumed to be constitutional and this presumption extends to every ground of attack made upon it by the bill and the evidence. *Munn v. Illinois*, 94 U. S. 123; *Gitlow v. New York*, 268 U. S. 652; *Arizona Copper Co. v. Hammer*, 250 U. S. 400.

It is also proper to examine the nature of the burden of proof which the law places upon appellants here. The weight of evidence required in such cases has been fully stated by the Court and it is plain that the rule requires pleadings and evidence of the most convincing character. In *Knoxville v. Knoxville Water Company*, 212 U. S. 1, 8, the Court says that the power of courts to declare state statutes unconstitutional and void, "ought to be exercised only in the clearest cases." In *Hyde v. Aetna Insurance Company*, 275 U. S. 440, 448, it is said:

> "The facts relied on to restrain the enforcement of rates prescribed under the function of state law must be specifically set forth and from them it must clearly appear that the rates would necessarily deny to the plaintiff just compensation and deprive it of its property without due process."

In *Georgia Railway Co. v. Railroad Commission of Georgia*, 262 U. S. 634, the Court said that the evidence in such cases must be such as to "compel a conviction that the rates would prove inadequate."

In *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287, Mr. Chief Justice Hughes, speaking for the

Court, says that in such cases the complainant has the burden of proof and the Court may not interfere with the exercise of the state's authority unless confiscation is "clearly established."

In *Dayton Power & Light Co. v. Public Utilities Commission*, 292 U. S. 39, Mr. Justice Cardozo, speaking for the Court, says that in such cases "the burden of proof rests heavily on applicant."

In *Lindheimer v. Illinois Bell Telephone Co.*, 292 U. S. 151, Mr. Chief Justice Hughes, speaking for the Court, said that in such cases the complaintants "have the burden of making a convincing showing."

In *L. & N. Ry. Co. v. Railroad Commission*, 208 Fed. 35, 42, the Circuit Court of Appeals for the Fifth Circuit said:

> "The judiciary is not permitted to interfere with the rates established by legislative authority unless it is made to appear clearly and beyond reasonable doubt that they are unreasonable and that their enforcement would be equivalent to the taking of property for public use without just compensation. If the evidence offered leaves the Court in doubt, if it is not clear, satisfactory, and convincing, the rate fixed by state authority should not be enjoined."

Certainly appellants have not made the convincing and satisfactory case required in such cases. The evidence is so voluminous it would not be possible to discuss it in this brief except in very broad outline. There are certain features of the case as developed by the evidence, however, to which we wish particularly to call the Court's attention.

1. In the first place it will be noted that appellants limit their evidence for the most part with respect to their operations, income, etc., to the years 1931 to 1935, inclusive. Practically

no evidence is given with respect to earnings or profits prior to the year 1930. The period selected by appellants for a test of the operations of the law under attack, therefore, includes years occupying the lowest point of an intense financial depression. Further it is to be noted that in one of the years included in the test period, to-wit, the year 1932, there was almost a complete failure in the tobacco crop. The value of the crop for that year was less than any year for which statistics on the tobacco industry are available except the years 1917, 1918 and 1922. (Complainants' Exhibit No. 15, R. p. 706.)

If the volume and value of the crop for the five years preceding 1930 be compared with the volume and value of the crop from 1931 to 1935, it will readily be seen how far the selected period is from a representative or average period. For instance, the average annual volume expressed in pounds from 1931 to and including 1935 is only 47,671,333 pounds per year, while the average for the years 1925 to and including 1929 is 65,298,347 pounds per year. The average price for the years 1931 to 1935 inclusive is 13.35c per pound while the average price from 1925 to 1929 is 17.28c per pound. (See Evidence H. H. Gardner, R. 460.) The annual average proceeds in dollars received from the crop from 1931 to and including 1935 in dollars and cents was $6,363,126.66 per year, while the average value or proceeds from the crop from 1925 to and including 1929 was $11,125,636.65 per year. The annual average difference in value, therefore, is $4,762,537.00 approximately. This difference was more than the entire value of the crops for 1931 and 1932, two of the years selected by appellants as the test period.

The 2½% commission charged by the warehousemen and which is not affected by the act, alone, when computed on this annual average difference, makes an annual average income of

$119,063.00 approximately, and if it be assumed that forty warehouse units are operating in the Georgia territory, the increase average annual income, based on the commission charge alone, would increase the income of the several warehousemen more than $3,000.00 each per year above the average annual income made or received by them during the test period.

While 1935 was the best season since 1929 from the standpoint of the warehouseman's operations, at the same time it is true that none of the other years included in the test period can be considered representative or normal.

When it appears, therefore, that the evidence of appellants is limited to the years 1931 to 1935 inclusive and that they have failed to show with any definiteness at all the income or profits from other years it certainly cannot be held, even if their evidence were otherwise sufficient, that they have shown confiscation or that the act is unreasonable from the standpoint of the revenue permitted within the rule stated in the cases hereinbefore cited.

2. In the second place it will be noted that there is no uniformity in the operation of appellants as to methods, expenses, and amounts paid for what appellants term skilled labor and there is a complete lack of accurate information with reference to their operations. For instance, very few of the operators own or claim to own the warehouses in which they conduct their businesses; and for those who do not own their warehouses there is a very decided difference as to amounts paid as rents for similar warehouses. W. E. Fenner and his associate paid a rental of $5,000.00 for the Farmers Warehouse at Moultrie in 1934 only for the tobacco season of practically one month. In 1935 the rental paid for the building for the season of practically one month was $5,055.00. (Evidence J. B. Fenner, R., p. 344.)

H. B. Wallace in 1935 paid $4,000.00 for rent on the Peoples Warehouse at Moultrie, Georgia, for the tobacco season. F. W. Brown in 1935 paid $3,500.00 for a warehouse at Nashville, Georgia, for the tobacco season, and Claude B. Strickland paid the same amount for a warehouse at Nashville, Georgia, while Townsend and Bernard paid only $1.00 per thousand pounds of tobacco sold for the use of a warehouse at Adel, Georgia, for the season and Paul Morgan paid $1.25 per thousand pounds for the use of a warehouse at Blackshear for the same season, and L. C. Pruitt paid $1.50 per thousand pounds of tobacco sold for the use of a warehouse at Waycross, Georgia, for the same season. These are merely examples. The record abounds with evidence disclosing a lack of uniformity in the amount paid or agreed to be paid by the warehousemen for the use of warehouses of similar capacity and composition throughout the territory.

Another instance of a lack of uniformity is found in the amounts paid to skilled labor, such as auctioneers, in the operation of these warehouses. In some instances the prices paid to auctioneers run as high as from $1,000.00 to $1,200.00 for services during the tobacco season in Georgia, while in other instances the price paid for competent auctioneers runs as low as from $300.00 to $400.00. There will also be found noticeable discrepancies in the amounts paid for common labor used in the operation of the several warehouses. Another instance will be found in the amount of exchange charged by the banks. At Vidalia the charge for exchange appears to have been reduced at the instance of the warehousemen to one-eighth of one per cent., thereby saving the warehousemen for 1935 several hundred dollars. (Evidence W. W. Bernard, R., p. 343.)

On the whole the records of the warehouseman and the evidence given by them with reference to their charges and services

even for the five years which they undertook to cover is far from complete and no evidence is given whatsoever in the record from which the average cost of the property or facilities used by the warehousemen over a period of five years can be ascertained. (Evidence H. H. Gardner, R., p. 459.) There is the utmost confusion, uncertainty and lack of accurate information as to the results of their operations. This consideration is offered as an argument that appellants have failed to establish that the rates under attack are unreasonable from a revenue standpoint as applied to their businesses in that convincing and compelling manner that the law in such cases requires.

3. An incident of the burden which appellants are required to carry is that they must show clearly and convincingly that their several businesses have been operated economically and efficiently. An examination of the record discloses a lack of efficiency and economical management. Examples only can be referred to in this brief but what is said here as to specific instances generally applies to the operations of appellants as a whole. Reference has already been made to the excessive rents paid by some of the appellants. They themselves concede that the rents paid are excessive. They are substantially more than are paid in other states. (Evidence J. B. Fenner, R., p. 344, 346; Evidence W. E. Fenner, R., p. 290.) Some of the warehousemen made a practice of loaning or advancing money to their customers. One of the appellants for 1935 shows a loss from this source of $1,164.95. (Evidence W. W. Bernard, R., p. 341.) See also evidence R. A. George, R. 232. F. W. Brown operated one of the warehouses at Nashville, Georgia, and is or was president of the Warehousemen's Association. During the 1935 season, lasting something like three weeks, the warehouse operated by him actually lost tobacco of the value of $1,700.00 for which no account could ever be made. The item is charged as expense of operation. (Evidence F. W. Brown, R., p. 205, 206.)

Claude B. Strickland also operated a warehouse at Nashville, Georgia, and it is shown that the warehouse operated by him during the season of 1935 lost tobacco of the value of $1,211.00. The item is charged as expense of operation. (Evidence C. B. Strickland, R., p. 256.)

Other losses in substantial amounts are shown not only in the case of Strickland and Brown but many other warehouse operators. Certainly such losses cannot be attributable to anything except carelessness or lack of efficiency.

It is asserted that practically all of the appellants were extravagant in the matter of employing solicitors for their several warehouses. For instance, L. C. Pruitt, operating one of the warehouses at Waycross, Georgia, spent during the 1935 season approximately $2,100.00 primarily, as he testified, for influence of prominent farmers in the county. (Evidence L. C. Pruitt, R., p. 358). He also contributed to the Chamber of Commerce the sum of $750.00 to be used in hauling tobacco from the territory to the Waycross market, a practice condemned by the Association as unethical and vicious. W. E. Fenner paid amounts to solicitors as follows: $220.00 to Martin Kirby, a local farmer; E. L. Ring, a local farmer, $547.40; W. L. Guthrie, $210.00; W. P. Kicklighter, a hardshell Baptist preacher (the amount paid is not stated), but Fenner stated that Mr. Kicklighter was employed as a solicitor because he (Fenner) thought he could control his congregation; H. B. Powers was paid $157.50, and S. I. Fleetwood $900.00, being a local solicitor. (R., p. 308,309.)

The instances cited are typical. The items of other expenses deducted by some of the warehousemen should be noticed. Take for instance B. B. Saunders who operates at Valdosta, Georgia. His statement indicates that during the 1935 season his gross receipts from auctioneers fees, weighing and handling charges

and commissions was $28,818.85. The general statement submitted is as follows:

"Gross Receipts		$28,818.85
Operating Expense	$16,464.31	
Rent	3,500.00	19,984.31
		8,834.54
Deposited with Clerk		4,811.93
Cleared Net		4,022.61"

Upon request that the operating expense item be broken down the figures were given as follows:

"Common Labor	$2,416.75
Salaries	5,846.77
General Expense	5,103.11
Interest on Purchase Money Contract for Warehouse	1,072.52
Exchange on Deposit	1,605.10
Lost Tobacco	158.62
Difference in checks	53.61
Advertising	227.90"

And upon further request that the item of expenses designated general expenses in the sum of $5,003.11 be further broken down the items composing the same were given as follows:

"Gas and tires	$704.64
C. L. Carter, Gas	32.73
Gas	500.00
Gas, Carter	33.88
Expense, White Sulphur Springs Convention	700.00
Georgia Tobacco Association	100.00
L. W. Goodman, Secretary Georgia Warehouse Association Bond for warehouse	56.82
Good Faith Deposit with Georgia Warehouse Association	250.00
Valdosta Tobacco Board of Trade	35.00
Balance on one Chevrolet automobile	348.18"

It is obvious that several of the items charged in this account could not properly be assessed as expenses against the warehouse operation. For instance, the item of $1,072.52 shown as interest on the purchase money for the warehouse building and the expense of $700.00 for a trip to White Sulphur Springs Convention and the sum of $348.16 as a balance on a Chevrolet automobile, and when such items are eliminated it appears that Mr. Saunders made from his operation in 1935, covering a period of practically three weeks active operation, the sum of $6,000.00, computing his charges and fees according to the statutory schedule. Evidence H. B. Glisson, R. 158-170.

There is another item which the warehousemen designated as bank exchange which should be noted. They claim that it costs more to operate in Georgia than in the Carolinas and Virginia and one reason assigned for the alleged difference in operating costs is the bank exchange item which, in fact, is nothing more than a service charge of $2.50 per $1,000 paid to the banks in the territory, not for the use of borrowed money, but for paying out money that belongs to the warehouseman. The impression is general that the so-called exchange item paid to the banks is excessive and it is conceded that it is burdensome. In fact, the amounts paid are substantial. It is obvious, too, that this evil could be remedied and it is one which the warehousemen themselves might remedy. It appears that in North Carolina the warehousemen acting in cooperation have accomplished much in correcting this evil and it further appears that at least in one town in the Georgia territory a reduction in the exchange rate has been made to half the amount that is paid in the other towns. (Evidence W. W. Bernard, R., p. 343; Evidence R. A. George, R., p. 226,227.) At least one of the warehousemen in addition to the payment of interest on borrowed money at 8% and the exchange rate of $2.50 for each $1,000 paid out, paid the

sum of $750.00 as a bonus for financial assistance during the season of 1935. (See evidence H. B. Wallace, R., p. 321, 322, 327.)

4. It will also be necessary for the Court to determine what effect competition, as between the warehousemen themselves, has had on their earnings. It must be remembered that the territory in which bright leaf tobacco is grown in South Georgia is limited and accordingly the volume produced from year to year is also limited. The evidence discloses without contradiction that warehouses have been built and are being operated out of proportion to the available volume of tobacco to be sold and the reasonable needs of the industry. (Evidence R. E. Currin, R., p. 530; evidence J. H. McLean, R., p. 391; evidence R. A. George, R., p. 237.) Further it is to be noted that as between the warehousemen themselves competition is keen. (Evidence Claude B. Strickland, R., p. 255; evidence H. B. Wallace, R., 328, 329; evidence W. E. Fenner, R., p. 308, 312.)

In paragraph 19 the court made a finding as follows:

> "It is not proven what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the act attacked. It is not denied that some warehousemen earned a satisfactory profit. It is not proven that in instances where a loss occured such loss was not due to excessive competition, ill-advised loans, unnecessary expenses in buying influence or hauling customers' tobacco, or other causes than the reduction in charges. The testimony as to the effects of the act attacked is as to the group of warehousemen who are complainants, rather than to the effect on each one, and even then it is not proven that all the losses are traceable to the reduction in charges rather than to other causes." (R., pp. 84-85.)

Error is assigned on this finding and the contention is made that it is contrary to the evidence and without evidence to support it

and that it is contrary to law in that said finding puts on complainants an undue burden of proof. (R., p. 102.)

What has been said above in this division of appellees' brief is sufficient, we think, to indicate that the finding is supported by evidence.

The Court in the case of *Public Service Commission of Montana v. Great Northern Utilities Company*, 289 U. S. 130, dealt with the question of competition as related to the guarantee provided by the Fourteenth Amendment of the Federal Constitution. The Court said:

> "The facts disclosed by the record compel the conclusion that, if competition shall continue in the future as in the past, appellee will not be able upon any rates within constitutional protection against reduction to earn a reasonable return upon the value of its property employed in the public service. The due process clause of the Fourteenth Amendment safeguards against the taking of private property, or the compelling of its use, for the service of the public without just compensation. *Raegan v. Farmers' Loan & T. Co.*, 154 U. S. 362, 410, 38 L. ed. 1014, 1027, 14 S. Ct. 1047, 4 Inters, Com. Rep. 560; *Smyth v. Ames*, 169 U. S. 466, 546, 42 L. ed. 819, 849, 18 S. Ct. 418; *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 41, 53 L. ed. 382, 395, 29 S. Ct. 192, 48 L. R. A. (N.S.) 1134, 15 Ann. Cas. 1034; *Missouri P. R. Co. v. Tucker*, 230 U. S. 340, 347, 57 L. ed. 1507, 1509, 33 S. Ct. 961; *Minnesota Rate Cases* (*Simpson v. Shepard*), 230 U. S. 352, 434, 57 L. ed. 1511, 1555, 33 S. Ct. 729, 48 L.R.A. (N.S.) 1151, Ann. Cas. 1916-A, 18; *Public Utility Comrs. v. New York Teleph. Co.*, 271 U. S. 23, 31, 70 L. ed. 808, 812, 46 S. Ct. 363. But it does not assure to public utilities the right under all circumstances to have a return upon the value of the property so used. The loss of, or the failure to obtain, patronage due to competition does not justify the imposition of charges that are exorbitant and unjust to the public.

> The clause of the Constitution here invoked does not protect public utilities against such business hazards."

See also *Aetna Insurance Company v. Hyde*, 275 U. S. 440; *Covington & Lexington Turnpike Road Company v. A. P. Sanford*, 164 U. S. 578; *San Diego Land & Town Company v. Jasper*, 189 U. S. 439; *Darnell v. Edwards*, 244 U. S. 564.

It is therefore submitted that the finding was not only supported by the evidence but is in accord with the principles of law applicable to such cases.

5. Furthermore, in the determination of what is a reasonable schedule of rates consideration must be given to the value of the service rendered to the growers. It is a well known rule of law that in determining the question of the reasonableness of a rate, the rights of the public are not to be ignored. In other words, the matter must be considered from the standpoint of the man who pays the rates as well as from the standpoint of the person who receives them. Under this rule not more can be exacted for any particular service rendered than that service is reasonably worth to the person to whom the service is rendered. The principle was stated in *Smyth v. Ames*, 169 U. S. 466, in the following words:

> "What the company is entitled to ask is a fair return upon the value of that which it employes for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

When the service rendered by the warehousemen is considered therefore from the standpoint of the value of that service to the grower, where do we find in the record any evidence that the rate prescribed by the act is unreasonable or inadequate?

This necessarily follows whether consideration is given to the effect of the act from the standpoint of the aggregate cost to the growers to market their crops or whether consideration be given to the value of the service from the standpoint of the individual transactions and service rendered, attending the sale in the ordinary, usual way of selling tobacco.

So that appellants have not made a case entitling them, jointly or severally, to relief under the contention that the act is unreasonable and arbitrary from the standpoint of revenue permitted or otherwise. Certainly such fact does not appear "clearly and beyond reasonable doubt."

VI.

CONCLUSION

The assignments of error are set forth by appellants in ten consecutively numbered paragraphs. (R., pp. 101-105.) Paragraph 3 relates to the finding embodied in the thirteenth paragraph of the court's finding to the effect that

> "The warehousemen have, unless regulated by law, an unduly coercive control over prices charged the growers for services"

and paragraph 6 relates to the twentieth paragraph of the court's finding to the effect that the warehousemen through the Association and their common agreement as to fees to be charged by them for services rendered,

> "Maintain and enjoy a virtual monopoly in the field covered by their operations,"

and paragraph 7 relates to the twenty-first paragraph of the court's finding to the effect that the business of tobacco warehousemen as conducted in Georgia was such as to cause it to be "affected with a public interest" and clothed "with a public use".

In division II of this brief we have dealt with the questions presented by these assignments of error.

In paragraph 9 error is assigned on the finding of the court as set out in paragraph twenty-three of its finding to the effect that the fixing of the scale of prices for services rendered does not burden or interfere with interstate commerce, and in paragraph 10 error is assigned on the conclusion of the court set out in paragraph four thereof, also dealing with the question of of interstate commerce. In Division I of this brief the questions presented by these assignments of error have been fully covered.

In paragraph 8 error is assigned upon the finding of the court embodied in paragraph twenty-two of the court's finding to the effect that the scale of charges prescribed by the Georgia act is not unreasonable, arbitrary or capricious and is reasonably adapted to accomplish the desired results. We have dealt with the legal question presented by this assignment of error in Divisions II, III, and IV of this brief and have therein endeavored to demonstate that the assignment of error is without merit.

Paragraph 2 of the assignment of error contends that the findings set out in paragraph ten of the court's finding to the effect that prior to 1927 the tobacco warehousemen in Georgia for many years had maintained and exacted from sellers of tobacco a uniform schedule of charges substantially, if not identically, the same as the schedule of charges fixed by the Act of 1935. (R., p. 101.) This finding, while incidental and not affecting the real merits of the case is supported by evidence. (See evidence R. E. Currin, R., p. 527; Evidence W. D. Dickerson, R., p. 561; F. W. Brown, R., p. 187, 188; evidence of J. H. McLean, R., p. 392.) See also Defendants' Exhibits 1-a, 2-a, 3, 4, 9 and 10, R., pages 624, 634, 644, 644, 659, and 662. The statements covering sales made by B. B. Saunders Warehouse for Ewell Brown on August 3rd, 1926 (R., pages 660 and 661) are of particular interest in view of the evidence of Mr. Saunders to the effect that the schedule of charges had always been the same as those in effect when the Warehouse Act was passed (R., page

135, Appellants' Brief page 46.) The total amounts of $1.44 warehouse charges, and $2.55 auction fees, shown on the statement at page 660 of the record could not have been arrived at by application of the schedule in effect in 1927 and after that time (See statements R., pages 662 and 663), but obviously were arrived at by application of a schedule substantially the same as fixed by the Act. Application of the statutory rate to the items in pounds shown R., page 660, for instance, will give results as follows:

Pounds	W. Charges	A. Fees
24	.10	.15
90	.10	.15
144	.14	.25
100	.10	.15
180	.18	.25
170	.17	.25
136	.13	.25
124	.12	.25
136	.13	.25
144	.14	.25
130	.13	.25
Total W. Charges	$1.44	Total A. fees $2.45

The statements for 1927, 1930, and 1931, from the B. B. Saunders Warehouse to growers (R., pages 662 and 663) show that the higher schedule was applied. Obviously Mr. Saunders' memory is at fault.

In paragraph 4 of the assignments of error exception is taken to the finding of the court contained in paragraph seventeen of its finding to the effect that the propriety of charging materially or any more for handling tobacco in Georgia than in the Carolinas is not established, thereby contending that this finding is contrary to the evidence and without evidence to support it. While the finding is incidental and unnecessary to the adjudica-

tion of the case herein involved it is respectfully submitted that when all the evidence is considered the finding is supported and justified.

In paragraph 5 of the assignment of error (R., p. 102) it is contended that the finding of the court set out in paragraph nineteen of its finding is without evidence to support it and is contrary to law in that such finding puts on appellants an undue burden of proof. We have dealt with the question presented by this assignment in subdivisions 2, 3 and 4 of Division V of this brief and respectfully submit that the contention is wholly without merit.

Paragraph 1 of the assignments of error relates to the final judgment entered by the court on the 27th day of November, 1936. It is contended that this finding or judgment of the court is contrary to the evidence, without evidence to support it and contrary to law. In conclusion it is submitted that the assignment of error is without merit. The evidence supports the findings of the District Court and the findings sustain the decree entered and the decree should be affirmed.

Respectfully submitted,

M. J. YEOMANS,
Attorney General

O. H. DUKES,
Assistant Attorney General

L. W. BRANCH,
Attorneys for Appellees.

Post Office Address as to
M. J. Yeomans and O. H. Dukes:
112 State Capitol,
Atlanta, Georgia.
Post Office Address as to
L. W. Branch;
Quitman, Georgia

P. 1.

SUPREME COURT OF THE UNITED STATES.

No. 781.—October Term, 1936.

C. R. Townsend and Park Bernard, a partnership known as Townsend & Bernard, doing business as Cook County Warehouse, Appellants,
vs.
M. J. Yeomans, Attorney General of the State of Georgia, et al.

Appeal from the District Court of the United States for the Middle District of Georgia.

[May 24, 1937.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

This suit was brought by tobacco warehousemen to restrain the enforcement of a statute of Georgia, approved March 28, 1935, fixing maximum charges for handling and selling leaf tobacco. Ga. L. 1935, pp. 476-8.

The validity of the statute was assailed as an arbitrary and capricious exercise of state power, repugnant to the Fourteenth Amendment of the Federal Constitution, and as placing a direct burden upon interstate commerce in violation of the commerce clause. The hearing in the District Court was by three judges (28 U. S. C. 380) and, upon findings of fact and conclusions of law, a final decree was entered dismissing the bill of complaint, one judge dissenting. The case comes here on appeal.

The facts found by the District Court with respect to the tobacco industry in Georgia and the nature of the transactions at the warehouses are not in dispute. It appears that this industry is relatively new, beginning in 1917, but by the year 1925 it was becoming well established. The type of tobacco grown in Georgia is the "bright leaf" which is almost exclusively used in the manufacture of cigarettes. This variety is grown extensively in North Carolina, to a much less extent in South Carolina and Georgia, and to some extent in Virginia, Kentucky and Tennessee. The acreage planted by the individual farmer in Georgia is comparatively small but the aggregate acreage is now not only very considerable but is widely

distributed over a large area in the southern portion of the State.

The necessity for markets and the early maturity of the tobacco in Georgia presented an opportunity which was early recognized by experienced and skilled warehousemen who were operating in the tobacco belts of North Carolina and other States, where selling seasons began sometime after the termination of the selling season in Georgia. With few exceptions, competent warehousemen, and experienced and skilled auctioneers and helpers in handling and selling tobacco are not found in Georgia and must be obtained from other States. There were forty-five warehouses operated in 1935, thirty-nine of which were connected in some capacity with warehouses in North Carolina, Kentucky, Virginia or Tennessee.

The principal purchasers of the bright leaf tobacco grown in Georgia and elsewhere are limited to a few large manufacturers of cigarettes. These are called "the Companies". They purchase tobacco only at warehouse auction sales to which they send or furnish "buyers". Each buyer is the representative of one of the competing purchasers and a "set of buyers", usually from eight to twelve in number, is made up of representatives from each of the purchasing cigarette manufacturers. The presence of a "set of buyers" is essential at an auction sale. A town having one or more warehouses is known as a "market". By sending a set of buyers to a new warehouse, the manufacturers may recognize a new market, and by refusing to send one to a old market may cause its abandonment; and by sending either one or two sets of buyers to a given market the manufacturers may determine the rapidity with which the accumulated tobacco may be disposed of. There is another class of purchasers known as "speculators". These on rare occasions buy tobacco from a grower and have it transported to a warehouse for sale. At auction sales speculators to a limited extent, as compared with buyers, purchase tobacco for a later sale. There is strenuous and expensive competition between warehousemen in securing tobacco from growers to be handled and sold, but in the sale of tobacco there is no competition except such as exists between the respective buyers and speculators at the auction sales, and the bids of the warehousemen themselves.

The tobacco belt in Georgia comprises about twenty counties in the southern part of the State, and in 1935 there were fifteen towns known as "markets". Seven of the markets were supplied with

one set of buyers and eight were furnished two sets. The "two set markets" had a total of thirty and the "one set markets" a total of fifteen warehouses in operation. The quantity of tobacco sold in the warehouses and the average prices ranged from 106,483,019 pounds at 9.86 cents per pound in 1930, to 71,826,352 pounds at 18.91 cents per pound in 1935.

After the tobacco has been cured and is ready for the market, the grower grades it as best he can and the resulting "piles" of loose leaves are placed in sheets which are then tied and the tobacco is so transported to the selected warehouse for sale. Auction sales are held daily during five days of the week, and in any particular warehouse as often as sufficient tobacco accumulates. It is essential that there be present the warehouseman, an auctioneer and other skilled help, and one set of buyers. The warehouseman makes the opening bid. If this is not taken or raised by another, the warehouseman generally becomes the purchaser of the tobacco for his own account. If not sold in that fashion the bidding continues until the sale is announced. The grower or other owner may turn down the sale and in such case he may hold the tobacco for a later sale or remove it. After the sale has been completed the tobacco is delivered to the purchaser who removes it from the floor. The purchaser has it reweighed and pays the warehouseman. The warehouseman then pays the seller the purchase price, less warehouse charges. Tobacco purchased by the warehouseman is afterwards sold by him at auction.

The tobacco is ready for the market in the latter part of July or early in August. The exact date for opening the selling season is fixed by the manufacturers, who are the principal buyers, and the warehousemen. The selling season is from three to five weeks in length. The short tobacco season causes growers to rush tobacco to the market and does not give them a fair opporunity "to properly grade, store, bundle, and orderly market their tobacco." The short season is in large part occasioned by the efforts of the manufacturers to transfer their buyers to the North Carolina belts, in some of which the selling seasons begin early in September, and the efforts of the warehousemen to dispose of the tobacco in Georgia so that they and their auctioneers and other skilled employees may proceed to the later and larger seasons of North Carolina and other States.

When the Act in question was passed, the warehouse charges, based upon three elements, the sale value, the number of piles handled and the weight of the quantity sold, were as follows:

Commissions: 2½ per cent. on gross sales.
Auction fees: 25 cents per pile up to 200 pounds; 50 cents per pile above 200 pounds.
Weighing and handling fees: 25 cents per pile up to 100 pounds, and 25 cents for each additional 100 pounds.

The Act of 1935 prescribed the following maximum charges:

Commissions: 2½ per cent. on gross sales.
Auction fees: 15 cents on all piles of 100 pounds or less; 25 cents on all piles over 100 pounds.
Weighing and handling fees: 10 cents per pile of 100 pounds or less, and 10 cents for each additional 100 pounds.

It will be observed that the statutory reduction is confined to the auction fees and the charges for weighing and handling. The percentage reduction is difficult of exact determination. Complainants say that the gross income of the warehousemen will be reduced about 20 per cent. The difference in dollars between the amount which complainants would have received in 1935 under the former schedule and the amount to which they would be entitled under the Act is found to be $115,920.90, and this amount was paid into the registry of the court. Statutes in North Carolina and South Carolina fix the same scale of charges as those prescribed by the Georgia Act. No attack has been made upon the constitutionality of these statutes. The scale heretofore in effect in Georgia "is not so high as the non-statutory Tennessee or Kentucky charges".

The District Court made additional findings, which appellants challenge, with respect to the control exercised by the warehousemen over the charges made for their services and their common agreement as to the amount of these charges. The court found that by reason of their control of the warehouses "warehousemen have, unless regulated by law, an unduly coercive control over the prices charged the growers for services"; that beginning with the tobacco selling season of 1927 all warehousemen in Georgia have uniformly maintained "a hard and fast schedule of charges"; that, while there have been some exceptions, they are "so insignificant as to be immaterial"; that prior to 1927 the warehousemen in

Georgia for many years, if not from the beginning of the industry, "had maintained and exacted from sellers of tobacco a uniform schedule of charges substantially, if not identically, the same as the schedule fixed by the Act of 1935".

The court also found that the propriety of charging more for handling tobacco in Georgia than in the Carolinas had not been established; that it had not been shown that the Georgia Act "was passed without any knowledge on the part of the legislature as to actual conditions under which the business was, and is, being carried on in Georgia"; that it had not been proved "what each or any warehouseman, individual or corporate, lost in revenue by reason of the scale of charges prescribed by the Act"; that it was not denied "that some warehousemen earned a satisfactory profit" and it had not been proved that where a loss occurred it was not due "to excessive competition, ill-advised loans, unnecessary expenses in buying influence or hauling customers' tobacco, or other causes than the reduction in charges". The court observed that the testimony as to the effects of the Act was with respect to the "group of warehousemen who are complainants, rather than to the effect on each one, and even then it was not proven that all the losses are traceable to the reduction in charges rather than to other causes".

The court made findings with regard to the organization known as the "Tobacco Warehousemen's Association" of which all the complainants were members. The court said that the prosecution of the suit was "an organized fight through the Warehousemen's Association"; that the growers are not eligible for membership in that organization; that "the Association and the buyers determine the date the market in Georgia opens and substantially determine the date on which it closes"; that the Association undertakes to deal with such practices as affect the interest of the members and adopts rules which they are to observe. The court quoted from the minutes of meetings certain action tending to support the view that there was a common agreement as to warehouse charges and a concert of action in relation to the present suit. The court concluded that "through the Warehousemen's Association and their common agreement" as to charges the complainants "maintain and enjoy a virtual monopoly in the field covered by their operations"; that the business of tobacco warehousemen in Georgia in 1935, and for some years prior thereto, was such as to cause it to be

"affected with a public interest"; that the scale of charges prescribed by the Act was "not unreasonable, arbitrary, and capricious" but was "reasonably adapted to accomplish the desired result"; and that the fixing of charges for the services rendered by the warehousemen did "not burden or interfere with interstate commerce".

First. Unless there is conflict with the authority of the Congress over interstate commerce, the enactment of the statute was clearly within the competency of the Georgia legislature. While appellants' assignment of errors challenge the conclusion of the District Court that the business of the tobacco warehouses was one "affected with a public interest", their counsel conceded in the argument at bar that the challenge could not be sustained. That concession was appropriate in view of the evidence and the findings. The uncontroverted facts with respect to the nature and extent of the tobacco industry, the establishment of markets for public sales, and the dependence of the industry upon the services of the warehousemen in connection with these sales, show beyond cavil the public interest in these markets and in the maintenance of reasonable charges for the services there rendered.

A similar conception of public interest, reenforced by abundant experience, is reflected in the legislation of other tobacco growing States. In Virginia the sale of tobacco in public warehouses has long been regulated by statute and maximum charges have been fixed. Code of Virginia, 1887, secs. 1819-1825; 1924, secs. 1376-1381. In North Carolina such regulation goes back to an early day. See Consolidated Statutes of North Carolina, secs. 5124 *et seq.* In *Gray* v. *Central Warehouse Co.*, 106 S. E. Rep. 657, the Supreme Court of that State, after summarizing the local legislation upon that subject since 1895, goes on to say:

"Indeed, as far back as the history of the state extends, the business of tobacco warehouses has been, if not a public duty, always 'affected with a public use'. The laws of North Carolina from 1669 to 1790 have been compiled as State Records, vols. 23, 24 and 25, by the writer of this opinion [Chief Justice Clark], and in the index thereto, in the last named volume, it appears that no less than 75 statutes were enacted prior to 1790 in regard to tobacco warehouses requiring inspection, regulation, and fixing charges in such business. To the fullest extent, therefore, their regulation and control by the public has been recognised and enforced in this State.—In fact, there is no subject in which the protection of the

producers against extortion and combinations to reduce prices is more important".

In South Carolina maximum charges for selling leaf tobacco upon the floor of tobacco warehouses are fixed. Code, South Carolina, 1932, sec. 7197, and earlier statutes there cited. The statute of Georgia, here under attack, copies almost exactly the South Carolina statute. See, also, as to the authority of the State, *Nash* v. *Page*, 80 Ky. 539; *Pannell* v. *Louisville Tobacco Warehouse Company*, 113 Ky. 630.

So far as the present controversy turns upon the power of the State to give this sort of protection to this industry, provided its regulation is not arbitrary or confiscatory and in the absence of conflict with the federal power over commerce, our rulings are decisive in support of the state action. *Munn* v. *Illinois*, 94 U. S. 113; *Budd* v. *New York*, 143 U. S. 517; *Brass* v. *Stoeser*, 153 U. S. 391; *German Alliance Insurance Company* v. *Lewis*, 233 U. S. 389; *O'Gorman & Young* v. *Hartford Insurance Co.*, 282 U. S. 215; *Nebbia* v. *New York*, 291 U. S. 502.

Confiscation is not shown. The presumption of reasonableness has not been overthrown. *O'Gorman & Young* v. *Hartford Insurance Co., supra.* It is apparent that the return to the warehousemen will largely be governed by the volume and value of the tobacco crop. The evidence relates chiefly to the years of the great depression and affords no appropriate criterion for a more normal period. Moreover, we find no sufficient ground for disturbing the finding of the District Court that the evidence did not satisfactorily establish what any warehouseman, individual or corporate, lost by reason of the prescribed scale of charge in contradistinction to its effect upon the warehousemen as a group. See *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 447, 448. The burden resting upon appellants to make a convincing showing that the statutory rates would operate so severely as to deprive them, respectively, of their property without due process of law, was not sustained. *Aetna Insurance Co.* v. *Hyde, supra*; *Los Angeles Gas & Electric Corporation* v. *Railroad Commission*, 289 U. S. 287, 304, 305; *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151, 164; *Dayton Power & Light Co.* v. *Public Utilities Commission*, 292 U. S. 290, 298.

Appellants contend that the legislative action was taken without investigation and hence must be considered to be arbitrary and

beyond the legislative power. There is no principle of constitutional law which nullifies action taken by a legislature, otherwise competent, in the absence of a special investigation. The result of particular legislative inquiries through commissions or otherwise may be most helpful in portraying the exigencies to which the legislative action has been addressed and in fortifying conclusions as to reasonableness. *Nebbia* v. *New York*, *supra*, pp. 516 *et seq.* But the legislature, acting within its sphere, is presumed to know the needs of the people of the State. Whether or not special inquiries should be made is a matter for the legislative discretion. Here, the existence of the industry, highly important to the State, the transactions in the tobacco markets, the necessity of protecting the growers from exorbitant warehouse charges, must be presumed to have been fully known to the members of the legislature and this presumption cannot be overthrown, as it has been sought to be overthrown, by testimony of individual legislators.

Second. The main contention of appellants is that the State had no power to enact the regulation as it attempted to govern transactions in the course of interstate and foreign commerce. Appellants urge that practically all the tobacco grown in Georgia is shipped out of the State, about forty per cent. in foreign, and the remaining sixty per cent. in interstate, commerce; that the purchasers at the "markets" in Georgia for the most part are manufacturers of cigarettes who immediately have the tobacco transported to their plants outside the State; that the purchases made by speculators and warehousemen are for the purpose of resale as soon as possible to the cigarette manufacturers, and thus that the tobacco so bought, as well as the rest, "is destined for interstate or foreign shipment".

We find it unnecessary to pass upon the authority of the Congress to regulate the charges of the warehousemen, for we are of the opinion that, if it be assumed that Congress has that authority, it has not been exercised and in the absence of such exercise the State may impose the regulation in question for the protection of its people.

The federal statute, to which appellants refer, is the "Tobacco Inspection Act" of August 28, 1935. 49 Stat. 731. That statute, while declaring the transactions in tobacco at auction markets to

be "affected with a public interest" (Sec. 2) had a limited objective. It did not undertake to regulate the charges of warehousemen or in any way to derogate from the existing state legislation upon that subject. It sought to aid tobacco growers by establishing and promoting the use of standards of classification and by maintaining an official inspection service. It was found that the farmer had "no definite system of grades of his own," that the private grading systems used by the buyers were kept "strictly confidential" so that "without Government standards the farmer has no definite guide for sorting his tobacco", and that hence "farmers generally are unable to class their tobacco correctly to meet the trade's demands".[1] To meet this need, the Act authorized the Secretary of Agriculture to make investigations and to establish standards for tobacco "by which its type, grade, size, condition, or other characteristics" might be determined (Sec. 3). It authorized the Secretary to designate auction markets, on determining "by referendum the desire of tobacco growers", but it was also provided that the Act should not be construed as preventing transactions in tobacco at markets not so designated (Sec. 5). It authorized the Secretary, independently or in cooperation with other branches of the Government, State agencies, or others, to employ and license competent persons as samplers or weighers but it was added that this provision was "intended merely to provide for the furnishing of services upon request of the owner or other person financially interested in tobacco to be sampled, inspected, or weighed", and should "not be construed otherwise" (Sec. 6). And the Secretary was further authorized, in order to carry out the purposes of the Act, to "cooperate with any other Department or agency of the Government; any State, territory, district or possession", as well as with purchasing and consuming organizations, boards of trade, etc. (Sec. 14).

The Congress, as the reports of the committees in both Houses show,[2] was fully conversant with the manner in which the transactions in tobacco were carried on. It cannot be doubted that the Congress was well aware of the long-established legislation in Virginia, North Carolina, South Carolina, and the more recent legis-

[1] See Report of the House Committee on Agriculture, H. R. Rep. No. 1102, 74th Cong., 1st sess.; Report of Senate Committee on Agriculture and Forestry, Sen. Rep. No. 1211, 74th Cong., 1st sess.

[2] See Note 1.

lation in Georgia, prescribing maximum charges for the services of warehousemen. We deem it to be highly significant that, in the light of existing practices and statutory regulations, the Congress carefully restricted its own requirements and did not attempt to interfere with the operation of state laws as to the amounts which warehousemen might charge. The purpose and terms of the federal statute negative any such intention. It is inconceivable that the Congress in endeavoring to aid the tobacco growers in sorting or "grading", and thus to facilitate the marketing of their tobacco, intended to deprive them of the protection they already had against extortionate charges of the warehousemen upon whom they depended in making their sales. Instead of frustrating the operation of such state laws, the provisions of the Act expressly afforded and emphasized the opportunity for cooperation with the States in protecting the farmers' interests. In this view we find no ground for the contention that Congress has taken possession of the field of regulation to the exclusion of state laws which do not conflict with its own requirements.

The case calls for the application of the well-established principle that Congress may circumscribe its regulation and occupy a limited field, and that the intent to supersede the exercise by the State of its police power as to matters not covered by the federal legislation is not to be implied unless the latter fairly interpreted is in actual conflict with the state law. *Savage* v. *Jones*, 225 U. S. 501, 533; *Atlantic Coast Line* v. *Georgia*, 234 U. S. 280, 293, 294; *Illinois Central R. R. Co.* v. *Public Utilities Commission*, 245 U. S. 493, 510; *Carey* v. *South Dakota*, 250 U. S. 118, 122; *Lehigh Valley R. Co.* v. *Public Utilities Commission*, 278 U. S. 24, 35; *Atchison, Topeka & Santa Fe Ruy. Co.* v. *Railroad Commission*, 283 U. S. 380, 392, 393; *Hartford Indemnity Co.* v. *Illinois*, 298 U. S. 155, 158.

Laying on one side the federal statute, as in no way inconsistent, we find no ground for concluding that the state requirements lay any *actual* burden upon interstate or foreign commerce. The Georgia Act does not attempt to fix the prices at the auction sales or to regulate the activities of the purchasers. The fixing of reasonable maximum charges for the services of the warehousemen in aid of the tobacco growers does not militate against any interest of those who buy. They pay the bid price, as accepted, and the

warehouseman pays the seller, deducting from the purchase price the warehouse charges.

We are thus brought to the final contention of appellants that the state law, although not in conflict with any exertion of federal authority, must fall as being repugnant to the existence of an exclusive federal power although unexercised. The contention ignores the principle that this ground of invalidity is to be found only with respect to such matters as demand a general system or uniformity of regulation; that in other matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act. *Cooley* v. *Board of Wardens*, 12 How. 299, 319; *Minnesota Rate Cases*, 230 U. S. 352, 399, 400; *Hendrick* v. *Maryland*, 235 U. S. 610, 622; *Morris* v. *Duby*, 274 U. S. 135, 143; *Sproles* v. *Binford*, 286 U. S. 374, 390.

In the instant case, the Georgia statute deals with a local need, exercising the State's protective power with respect to its own industry. A similar contention to that now advanced was held untenable in *Munn* v. *Illinois*, 94 U. S. 113, where state regulation of charges by the proprietors of grain elevators was sustained despite the fact that the elevators were used as instrumentalities by those who engaged in interstate commerce. *Id.*, p. 135. The point was again raised and overruled in *Budd* v. *New York*, 143 U. S. 517, in upholding the New York statute regulating charges for "elevating, trimming, receiving, weighing and discharging grain by means of floating and stationary elevators and warehouses". It was recognized that, in the actual state of the business, the passage of the grain to the City of New York and other places on the seaboard without the use of elevators would be practically impossible. The elevator at Buffalo was a link in the chain of transportation of the grain from the places where it was grown to the seaboard, but the Court said: "So far as the statute in question is a regulation of commerce, it is a regulation of commerce only on the waters of the State of New York. It operates only within the limits of that State, and is no more obnoxious as a regulation of interstate commerce than was the statute of Illinois in respect to warehouses, in *Munn* v. *Illinois*. It is of the same character with navigation laws in respect to navigation within the State, and laws regulating wharfage rates within the State, and

other kindred laws". *Id.*, pp. 544, 545. Again, in *Brass* v. *North Dakota*, 153 U. S. 391, the statute of that State "regulating grain warehouses and weighing and handling of grain" was held not to amount to a regulation of commerce between the States in the absence of a conflict with federal legislation, upon the authority of the *Munn* and *Budd* cases.

In *Cargill Company* v. *Minnesota*, 180 U. S. 452, 470, the requirement of a state license for grain warehouses on railroad rights of way was found to be not inconsistent with the power of the Congress, although the warehouse company purchased the grain, handled in or shipped from its warehouse, for the purpose of transporting it as its property to its terminal elevators in Wisconsin and Illinois and thence to other points in the eastern States. *Id.*, p. 462. The Court thus stated the reasons for this conclusion: "The statute puts no obstacle in the way of the purchase by the defendant company of grain in the State or the shipment out of the State of such grain as it purchased. The license has reference only to the business of the defendant at its elevator and warehouse. The statute only requires a license in respect of business conducted at an established warehouse in the State between the defendant and the sellers of grain. . . . In no real or substantial sense is such commerce obstructed by the requirement of a license". See, also, *Merchants' Exchange* v. *Missouri*, 248 U. S. 365, 268.

Even where the Federal Government has intervened, as in the United States Warehousing Act of August 11, 1916, 7 U. S. C., c. 10, in providing for licenses for warehouses where agricultural products are "stored for interstate or foreign commece", we held that the license did not convert the warehouseman into an instrumentality of the Federal Government and, while by means of the licensing provisions a measure of control over those engaged in the business was secured to the national government, still the license did not confer upon the warehouseman immunity from state taxation. *Federal Compress Co.* v. *McLean*, 291 U. S. 17, 22, 23. That case was followed by our decision in *Chassiniol* v. *Greenwood*, 291 U. S. 584, to the effect that the business of buying and selling cotton locally produced, processed and warehoused, was local in character, and that a local occupation tax upon the buyer did not contravene the commerce clause although the course of the business was such that all the cotton so bought was ultimately shipped by

the buyer in interstate or foreign commerce. On similar grounds we held in *Minnesota* v. *Blasius*, 290 U. S. 1, 8, that because there was "a flow of interstate commerce" which was subject to the regulating power of the Congress, it did not necessarily follow that, in the absence of a conflict with the exercise of that power, a State might not lay a non-discriminatory tax upon property which "although connected with that flow as a general course of business" had come to rest and acquired a situs within the State.

All these decisions but illustrate the principle that the mere existence of the congressional power, no conflict with its exercise being shown, does not deprive the States of their authority to safeguard their local interests by legislation which does not directly burden transactions in interstate or foreign commerce.

The cases upon which appellants rely are distinguishable. In *Dahnke-Walker Company* v. *Bondurant*, 257 U. S. 282, the statute held to be invalid imposed burdensome conditions upon the enforcement of rights arising from transactions in interstate commerce. In *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, the North Dakota statute of 1919 disclosed a comprehensive scheme to regulate the buying of grain in the course of interstate commerce. Such purchases could be made only by those who held licenses from the State, paid state charges for the same, and acted under a system of grading, inspecting and weighing fully defined in the Act. The grain could only be purchased subject to the power of the state grain inspector to determine the margin of profit which the buyer could realize upon his purchase. That margin of profit was defined to be the difference between the price paid at the North Dakota elevator and the market price, with an allowance for freight, at the Minnesota points to which the grain was shipped and sold. The state officer was thus authorized to "fix and determine the price" to be paid for grain which was "bought, shipped, and sold in interstate commerce". That the provision was a regulation of interstate commerce was said to be "obvious from its mere statement". *Id.*, pp. 56-58. The later North Dakota statute of 1923 fell under a like condemnation in *Shafer* v. *Farmers Grain Company*, 268 U. S. 189, as the statute subjected the buying for interstate shipment to conditions and a measure of control which caused a direct interference with interstate commerce.

Here, the Georgia Act lays no constraint upon purchases in interstate commerce, does not attempt to fix the prices or conditions of

purchases, or the profit of the purchasers. It simply seeks to protect the tobacco growers from unreasonable charges of the warehousemen for their services to the growers in handling and selling the tobacco for their account. Whatever relation these transactions had to interstate and foreign commerce, the effect is merely incidental and imposes no direct burden upon that commerce. The State is entitled to afford its industry this measure of protection until its requirement is superseded by valid federal regulation. The judgment of the District Court is affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.